

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") reconsideration decision dated November 5, 2019, which determined that pursuant to section 9 of the Employment and Assistance for Persons With Disabilities Regulation ("EAPWDR"), the appellant was not eligible for disability assistance (DA) for November 2019 because the net income received in September 2019, determined under Schedule B of the EAPWDR, exceeded the DA rate determined under Schedule A of the EAPWDR.

PART D – RELEVANT LEGISLATION

EAPWDR Section 1, 9, 29 and Schedules A and B

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 appellant is a sole recipient of disability assistance with no dependents.

The evidence before the ministry at reconsideration included:

- A Request for Reconsideration signed by the appellant on October 28, 2019 stating that the ministry owes fairness to clients to notify in advance that ineligibility would occur and that two weeks notice is insufficient. The appellant also writes that not every client has to be an expert on income deductions to compensate for systemic deficiencies in providing vital information to clients who live with disabilities.
- A letter from Canada Pension Plan (CPP) to the ministry dated August 27, 2019, which informed them that they had received the Consent to Deduction and Payment form for the appellant, that CPP had been approved and that an amount of \$8,517.87 will be reimbursed for the months of February 2018 to August 2019.
- A letter from the ministry to the appellant dated October 7, 2019 informing the appellant that no cheque will be issued on October 23, 2019 due to receiving a lump sum CPP payment.

The appellant wrote on the Notice of Appeal form on November 14, 2019 that this was the first time this has occurred and didn't know of having to report this payment from pension.

The ministry's written submission was a letter dated December 12, 2019 in which they explain that an error had been made in their Reconsideration Decision (RD) and that they would like to provide clarification specific to a recipient receiving a lump sum payment of CPP income. They write that:

- Section 11 of Schedule B of EAPWDR explains that if a lump sum of CPP is provided to a family for a calendar month that would not have been provided if a pension benefit had been paid for that month and subsequently a CPP payment is made, that the amount of that pension benefit must be treated as unearned income and is considered to have been received by the recipient in that month.
- In the appellant's case, a lump sum payment of \$2,154.98 was received in September 2019 and of that amount \$1,392 was for a backdated payment for the period of February 2018 to August 2019.
- As the appellant was in receipt of DA for that same time period of February 2018 to August 2019 the \$1,392 CPP backdated payment should not have been deducted from the November DA in accordance with Section 11 of Schedule B of the EAPWDR.
- The remaining \$762.98 from the lump sum payment is not back dated CPP but is the current payment of CPP and therefore must be deducted from the November DA.

The appellant did not provide additional information for the written hearing.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry decision dated November 5, 2019, which determined that pursuant to section 9 of the EAPWDR the appellant was not eligible for DA for November 2019 because the net income in September 2019 (determined under Schedule B of the EAPWDR) exceeded the DA rate (determined under Schedule A of the EAPWDR), was reasonably supported by the evidence or a reasonable interpretation of the legislation.

The relevant legislation is as follows:

EAPWDR

Section 1, definitions

"**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 (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.

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.

Monthly support allowance

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	808.42

Monthly Shelter Allowance

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

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:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) Repealed. [B.C. Reg. 96/2017, App. 2, s. 2 (a).]
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (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);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
 - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
 - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;
- (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (xxii) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family

Development's At Home Program;

(xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]

(xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;

(xxvi) a loan that is

- (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
- (B) received and used for the purposes set out in the business plan;

(xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's

- (A) Autism Funding: Under Age 6 Program, or
- (B) Autism Funding: Ages 6 — 18 Program;

(xxviii) Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]

(xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

(xxx) a refund provided under Plan I as established under the Drug Plans Regulation;

(xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

(xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

(xxxiv) money withdrawn from a registered disability savings plan;

(xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);

(xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;

(xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;

(xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

(xliii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;

(xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(xlv) a BC early childhood tax benefit;

(xlvi) child support;

(xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);

(xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;

(xlix) gifts;

- (I) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;
- (li) money withdrawn from a registered education savings plan;
- (lii) compensation paid or payable under section 17 [*compensation in fatal cases*] or 18 [*addition to payments*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a

child, as defined in section 17 of that Act;

(liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

(liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;

(liv.1) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;

(liv.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;

(lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

(lvi) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;

(lvii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;

(lviii) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits,

(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.

(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

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*;

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

Section 9(2) of the EAPWDR states that 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, however, as the ministry identified in their written submission for the hearing, Section 11 of Schedule B specifically addresses how backdated CPP is to be considered in the appellant's situation.

The panel found the appeal record confusing and lacking in evidence in regards to the amount of CPP that the appellant actually received in September 2019. In the letter from the federal government (CPP) to the provincial government (ministry), they write that \$8,517.87 would be reimbursed for the period February 2018 to August 2019. In the Request for Reconsideration (RR) it was noted that the appellant received a total CPP amount of \$2,154.98 in September, of which a lump sum payment was \$1,700.76 for survivors benefits as well as \$452.22 for CPP disability. In the ministry written submission they write that although the appellant received a lump sum payment of \$2,154.98, the backdated payment for February 2018 to August 2019 was \$1,392, which conflicts with the amount cited in the RR. It would have been helpful to have the actual CPP statement and the appellant's declaration of what was received to support what the ministry wrote in the RR, the RD and the written submission. The panel will use the amount cited in the written submission, which is that the appellant received a lump sum payment of \$2,154.98 of which \$1,392 is for the backdated CPP and \$762.98 is the current CPP survivor amount.

In the Reconsideration Decision, the Reconsideration Officer focused on Section 9(2), which states that a person having net income higher than the allowable amount is not eligible for disability assistance. The decision was that because the appellant's September CPP income of \$2,154.98 was higher than the disability assistance of \$1223.42 there was no eligibility for November assistance. However, the ministry, in their written submission, acknowledged that an error had been made by not considering Section 11 of Schedule B, which states that if a person had been in receipt of disability assistance for the same period of time that a backdated CPP payment is made, that the pension benefit is considered to have been received by the recipient for the month that it was issued for. The ministry writes that, in the appellant's circumstance, the backdated CPP amount of \$1,392 was for the period of February 2018 to August 2019 and because disability assistance was in pay for that period of time, it should not have been deducted from the November disability assistance. The panel finds that the ministry was unreasonable in their Reconsideration Decision because they did not consider Section 11 of Schedule B of the EAPWDR, which specifically addresses how to treat the backdated CPP amount, which in the appellant's circumstance, is that it was not to be deducted from the November disability assistance because of being in receipt of disability assistance for the same period of time that the backdated payment was for.

Conclusion

The panel finds that the ministry Reconsideration Decision to deduct the CPP back-payment of \$1,392 off the appellant's November disability assistance was an unreasonable application of Section 11 of Schedule B of the EAPWDR and rescinds the ministry decision. The appellant is successful in this appeal.

APPEAL NUMBER

PARTG-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)

PARTH-SIGNATURES

PRINT NAME

Janet Ward

SIGNATURE OF CHAIR

DATE(YEAR/MONTH/DAY)

2019 December 30

PRINT NAME

Susanne Dahlin

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2019 December 30

PRINT NAME

Carlos Garcia

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2020 January 4