

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated November 18, 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 a company pension plan survivor allowance, pursuant to Section 24 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1 and 24, 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 evidence before the ministry at the time of the reconsideration decision included:

- Request for Reconsideration form dated November 1, 2019 in which the appellant wrote:
 - I am a beneficiary
 - The money is classed as survivor allowance
 - It is not a private pension that I worked for
 - (k) surviving spouse or orphan's allowance
 - (l) a trust or inheritance
 - the survivor allowance comes from an estate
- A letter from a pension office dated April 9, 2019 informing that the appellant is eligible to receive benefits under the survivor provision of the company's pension plan for the remainder of the appellant's life.
- A 2016 annual statement for the company's pension plan that shows that the appellant was a spouse and a beneficiary on the plan.
- A certified true copy, stamped April 16, 2019, of a Death Certificate.
- A letter dated April 16, 2019 from a Solicitor to the appellant confirming that the appellant is eligible to receive benefits with respect to the spouse's pension plan.

On the Notice of Appeal form dated November 27, 2019 the appellant wrote that the pension is an inheritance due to being named beneficiary, so the appellant would still receive money instead of child support, to help raise a child after the child's father's passing.

The appellant did not provide a written submission.

The ministry relied on its reconsideration decision summary as its submission on the appeal.

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 a company pension plan survivor allowance, pursuant to Section 24 of the EAPWDR.

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;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada);
- (w) tax refunds;
- (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (y) gifts in the form of payment by another person of a debt or obligation.

Section 24 of the EAPWDR provides:

Amount of disability assistance

24 Subject to Section 24.1 (3), 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

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.

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

Deduction and exemption rules

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:

...

(xlvii) child support;

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

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

...

(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.

The appellant's position is that the survivor allowance is an inheritance because of being named as a beneficiary on the spouse's pension plan and that the money being received is for their child's support so therefore should not be deducted from the disability assistance.

The ministry's position is that funds received from a pension plan are considered unearned income and therefore must be deducted from the appellant's disability assistance pursuant to section 24 of the EAPWDR.

Panel Decision

Pursuant to section 24 EAPWDR, disability assistance is paid to the family unit. The amount of assistance is calculated pursuant to Schedule A of EAPWDR. Any net income whether earned or unearned by the family unit is determined pursuant to Schedule B and is deducted from the amount calculated pursuant to Schedule A. In the appellant's circumstance, the disability assistance rate pursuant to Schedule A is \$1,576.70 per month and the amount of survivor allowance that the appellant receives is \$1,011.11 per month.

The evidence in the appeal record indicates that the appellant was found eligible for a survivor allowance from a company pension plan because the spouse was deceased and the appellant was named as the beneficiary of the pension. The company wrote that the appellant is entitled to receive benefits under the survivor provision of the company pension plan and that 100% of the spouse's pension will be payable to the appellant for the remainder of the appellant's life.

In section 1 of EAPWDR, the definition of unearned income lists specific sources that are considered to be unearned income, and it also determines that all unearned income must be included except for specific deductions. In the appellant's circumstance, subsections (e), (k) or (l) could be applicable because the appellant is receiving a survivor allowance from a company pension plan and argues that this benefit is an inheritance that is being used to support their child. The ministry argues that this benefit is to be considered superannuation because it comes from a private company pension plan, and that the appellant declares it on the monthly report under the category "Private Pensions". The ministry also argues that any income that is not earned income, and includes without limitation, money or value received from superannuation benefits and surviving spouses or orphan's allowance is also considered unearned income. The panel found that the amounts the appellant receives as a survivor allowance from a pension plan could fall under either (e) superannuation or (k) surviving spouse or orphan's

allowance in the definition for "unearned income". Therefore, the panel finds that the ministry reasonably determined that the survivor allowance meets the definition of unearned income. The appellant was listed as a beneficiary of a pension, however, there is no evidence to indicate that there was a payment from an estate, rather, there is evidence that the payment comes directly from the company pension plan, so therefore the panel finds that the survivor allowance is not considered an inheritance, so (l) is not relevant in the appellant's circumstance.

When reviewing section 1 of Schedule B of the EAPWDR for allowable exemptions, the panel notes that only three of the many exemptions under section 1(a) required closer review to determine whether they were relevant in the appellant's circumstance. Section 1(a)(xlvi) is relevant to child support, and although the appellant argues that the funds being received are to replace child support, the panel finds that the evidence shows that the appellant is the beneficiary and the recipient of the survivor allowance, with no documentation to confirm that the allowance is designated as child support, so this exemption does not apply. Section 1(a)(xlvii) is relevant to orphan's benefits under the Canada Pension Plan (CPP) Act, and although the appellant has a dependant child, they are not receiving orphan's benefits from CPP so this exemption does not apply. Section 1(a)(xlviii) is relevant to money or other value received, by will or as the result of intestacy, from the estate of a deceased person, and although the appellant was named as a beneficiary of a pension in regards to a deceased spouse, the money is payable from the company directly to the appellant and is not payable from the estate of a deceased person so this exemption does not apply. The panel finds that the ministry reasonably determined that the survivor allowance the appellant receives does not meet any of the 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. In the appellant's circumstance, 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 the company pension plan survivor allowance, 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 a company pension plan survivor allowance, pursuant to Section 24 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 EAA. Therefore, the appellant is not successful in this appeal.

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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

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 January 15

PRINT NAME

Robert Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 January 15

PRINT NAME

Linda Smerychyski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 January 15