

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of November 14, 2019 (the “Reconsideration Decision”), in which the Ministry held that \$387.87 of the monthly amount received by either the Appellant or the Appellant’s eldest son from the Canada Pension Plan (“CPP”) were survivor benefits which are deductible from the Appellant’s monthly income assistance as “unearned income”, pursuant to section 1 of the *Employment and Assistance Regulation* (“EAR”), and are not exempt or deductible under any of the provisions of Schedule B to the EAR.

PART D – RELEVANT LEGISLATION

EAR, section 1
Schedule A to the EAR, sections 2 and 4
Schedule B to the EAR, sections 1, 6, 7, and 8

PART E – SUMMARY OF FACTS

The Appellant is a recipient of income assistance who resides with three dependent children.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- Letter from the Ministry, dated September 13, 2019, confirming that the Ministry had determined that \$387.87 of the \$1,138.68 in CPP benefits received each month, were determined to be CPP survivor benefits, based on the Ministry's data matches with Service Canada, and were deductible from the Appellant's monthly assistance as unearned income;
- A CPP income list, for the month of October, 2019, with a breakdown of the monthly total paid as CPP, including \$387.87 in CPP survivor's benefits, and noting the Appellant as payee;
- A letter, dated October 10, 2017, from Service Canada (the "October 10, 2017 Letter") to the Appellant, setting out that the Appellant was "not eligible" for "Canada Pension Benefits (cpp)" and that an adjustment of \$372.55 would be sent to the estate of the Appellant's spouse for the benefit of the Appellant's eldest child;
- A letter, dated November 9, 2017, from Service Canada (the "November 9, 2017 Letter") setting out that the Appellant's application for a CPP survivor's pension had been approved, effective as of December, 2016;
- A CPP income list, for the month of March, 2018, with a breakdown of the monthly total paid as CPP, including \$379.15 in CPP survivor's benefits, and noting the Appellant as payee;
- A letter, dated November 9, 2017, from Service Canada (the "Second November 9, 2017 Letter") to the Appellant, setting out that the Appellant had previously made an application for survivor benefits, that there was no need to make a new one, and that "there is benefits in place under the Canada Pension Plan for the said children."
- The Appellant's Request for Reconsideration, dated October 20, 2019 ("RFR"), which included:
 - a handwritten note where the Appellant explained that:
 - the Appellant had gone through this issue before with the Ministry;
 - the Appellant had spoken to legal counsel about the matter;
 - the Appellant had been dealing with the death of a stepchild and that it was difficult to arrange calls with the Ministry when the Appellant's kids were around or on days when the Appellant had to work, which is why the Appellant had, to date, not been able to participate in a phone call between Service Canada and the Ministry;
 - The October 10, 2017 Letter;
 - A letter, dated May 30, 2017, from Service Canada (the "May 30, 2017 Letter") to the Appellant, which set out that "you did not qualify for the benefits under the Canada Pension Plan."
 - The November 9, 2017 Letter;
 - A letter from this tribunal, dated January 2, 2018, indicating that the Appellant had been successful in a prior appeal concerning the matter of the survivor benefits being paid;
 - A letter, dated August 16, 2019, from Service Canada (the "August 16, 2019") indicating that the Appellant's application for a -CPP survivor's pension had been approved and listing the various benefits payable to members of the Appellant's family;
 - A letter, dated January 1, 2017, from Service Canada (the "January 1, 2017 Letter"), setting out that the Appellant's application for a CPP survivor's pension had been approved and listing the amount of the benefits payable to two (2) of the Appellant's children;

- A letter, dated October 10, 2017, from Service Canada (the “Second October 10, 2017 Letter”), setting out that the Appellant’s application for a CPP survivor’s pension had been approved and listing the amount of the benefits payable to each of the Appellant’s children;
- A letter, dated May 30, 2017, from Service Canada (the “Second May 30, 2017 Letter”) to the Appellant, setting out that the Appellant was “not eligible” for “Canada Pension Benefits (cpp)” and that an adjustment of \$356.18 would be sent to the estate of the Appellant’s spouse for the benefit of the Appellant’s eldest child;

In the Notice of Appeal, filed November 18, 2019, the Appellant stated that the Appellant had already been through this and had not received anything “not even my kids’ money witch it all goes to a Public trustee.”

Prior to the hearing of the appeal, the Appellant made a further submission (the “Submission”), which included:

- A T4A for 2018 in the name of one of the Appellant’s children for what appears to be the amount of CPP orphans’ benefits;
- The October 10, 2017 Letter;
- The Second October 10, 2017 Letter;
- A third letter, dated October 10, 2017, from Service Canada, which contained all of the same information as the Second October 10, 2017 Letter but was date stamped November 8, 2017;
- A payment details summary, dated November 27, 2019; and
- A typed letter from the Appellant which reiterated many of the points made in the handwritten note attached to the Appellant’s RFR and added that all of the CPP monies payable to the family are paid by Service Canada to the Public Guardian and Trustee of BC (“PGT”) and that it would cost \$150.00 per child to get a letter from the PGT confirming this.

At the hearing of the appeal, the Appellant reminded the panel that the matter of the CPP survivor’s benefits had already been dealt with previously and that the Ministry’s previous reconsideration decision holding that they were deductible had been rescinded. The Appellant agreed that the portion in issue are indeed survivor’s benefits but insisted that they are paid for the benefit of the Appellant’s oldest. The Appellant also stated that all of CPP monies, including the survivor’s benefits and the orphans’ benefits, are paid in one cheque that goes directly to the PGT. The Appellant denied receiving a T4A slip for survivor’s benefits and stated, when asked that the Appellant’s oldest child receives two sets of T4A slips each year. The Appellant confirmed, however, that the amount on the T4A slip for survivor’s benefits have been added to the Appellant’s tax returns in years past.

The Ministry relied on the Reconsideration Decision and submitted that the portion of the CPP payments each month that are survivor’s benefits are deductible under the EAR as unearned income. The Ministry also, when asked by the panel, referred to references in the Reconsideration Decision to grammatical errors in the October 10, 2017 letter, the fact that the Second May 30, 2017 contained exactly the same wording and grammatical errors, and other matters that raised a question as to the authenticity of the information provided by the Appellant.

The panel admits the oral evidence of the Appellant at the hearing of the Appeal and the Submission as evidence that is not part of the record but is reasonably required for a full and fair disclosure on all matters related to the appeal, pursuant to section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry was reasonable in its determination that the monthly amount received by either the Appellant or the Appellant’s eldest in CPP survivor benefits are deductible from the Appellant’s monthly income assistance as “unearned income”, pursuant to section 1 of the EAR, and are not exempt or deductible under any of the provisions of Schedule B to the EAR.

Statutory Provisions

Section 1 of the EAR defines unearned income as follows:

"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;

Sections 2 and 4 of Schedule A to the EAR set out the monthly support allowance and shelter allowances available to eligible family units:

Monthly support allowance

2 (0.1) For the purposes of this section:

"deemed dependent children", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"warrant" has the meaning of a warrant in section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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 of support
4	Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age	\$525.58

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of a warrant in section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 15.2 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
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700

Section 1 of Schedule B to the EAR sets out the general rules for calculating a family unit's net income and describes specific types of income that are exempt from inclusion, including CPP orphans' benefits:

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income assistance*] of this regulation,

(a) the following are exempt from income:

...

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

...

(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 of this Schedule,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

Section 6 of Schedule B to the EAR provides for specific deductions from unearned income as follows:

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.

Sections 7 and 8 of Schedule B to the EAR:

Exemptions — unearned income

7 (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b) or (c) of the definition of disability-related cost in section 13 (1) [*assets held in trust for person receiving special care*] 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 13 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 13.1 (2) [*temporary exemption of assets for person applying for disability designation or 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 11 [*asset limits*] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [*assets held in trust for person receiving special care*] 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 13 (2) (a) 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 13.1 (2) [*temporary exemption of assets for person applying for disability designation or 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 13 (2) of this regulation;
 - (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 13 (2) (a) of this regulation;
 - (iii) money expended by a person referred to in section 13.1 (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. 1, s. 4 (b).]

(3) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 24 (f).]

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 described in subsection (3) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

- (a) a training allowance;
- (b) student financial assistance;
- (c) student grants, bursaries and scholarships;
- (d) disbursements from a registered education savings plan.

(3) An exemption under subsection (2) may be authorized in respect of a student who is

- (a) a dependent child enrolled as a student in either a funded or an unfunded program of studies,
- (b) an applicant or a recipient enrolled
 - (i) as a part-time student in an unfunded program of studies, or
 - (ii) with the prior approval of the minister, as a full-time student in an unfunded program of studies, or
- (c) a person in a category listed in section 29 (4) [*consequences of failing to meet employment-related obligations*] of this regulation enrolled as a part-time student in a funded program of studies.

(4) The minister may authorize an exemption for a student described in subsection (5) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

- (a) a training allowance;
- (b) student grants, bursaries and scholarships, except student grants, bursaries and scholarships provided under the *Canada Student Financial Assistance Act*;
- (c) disbursements from a registered education savings plan.

(5) An exemption under subsection (4) may be authorized in respect of a student who is

- (a) a recipient enrolled as a part-time student in a funded program of studies, or

(b) described in section 16 (1.1) [*effect of family unit including full-time student*] of this regulation.

Panel Decision

Pursuant to sections 2 and 4 of Schedule A to the EAR, the Appellant, as a sole recipient under age 65 with one or more dependent children, is entitled to receive income assistance in the amount of \$525.58 per month. The Appellant is also eligible for a monthly shelter allowance of \$700.00 per month. Section 28 of the EAR provides that a family unit's monthly net income must be deducted from the recipient's monthly disability assistance.

Pursuant to section 1(d) of Schedule B to the EAR, all unearned income must be included in the calculation of a family unit's net income, "except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule". Section 1 of Schedule B also sets out a number of types of income that are not to be included in the calculation of a family unit's net income, including, under section 1(a)(xlvi), "orphan's benefits under the Canada Pension Plan Act (Canada)."

Unearned income is defined in section 1 of the EAR and subsection (f) of the definition expressly includes "any type or class of Canada Pension Plan benefits."

In the result, all of the CPP benefits received by any member of the Appellant's family unit, except orphan's benefits, are included in the calculation of the family unit's net income each month, except those that fall under the deductions permitted under section 6 or the exemptions provided for in sections 7 and 8 of Schedule B.

Based on the information provided to the Ministry by Service Canada and the documents submitted by the Appellant to the Ministry, all three of the Appellant's children receive CPP orphan's benefits. According to Service Canada, the Appellant also receives a survivor's benefit. The Appellant's evidence is that the survivor's benefit is actually paid to the Appellant's oldest child and that the entire cheque from CPP is paid to the PGT. The reason for the discrepancy between Service Canada's records and the Appellant's evidence in respect of who receives the survivor's benefit is not clear but, either way, it is clear that a portion of the total amount paid to the family unit each month is comprised of CPP survivor benefits.

CPP survivor's benefits are not among the categories of income that is not included in the calculation of a family unit's net income, pursuant to section 1(a) of Schedule B to the EAR. In the result, the survivor's benefit paid each month by CPP is included in the calculation of the Appellant's family's net income unless it is deductible under section 6 or exempt under sections 7 or 8 of Schedule B to the EAR.

Section 6 of Schedule B to the EAR provides for the deductibility of income tax deducted from employment insurance benefits or essential operating costs of renting self-contained suites. The CPP survivor's benefits paid monthly to the Appellant's family unit do not fall under either of these categories.

Likewise, none of the exemptions in section 7 of Schedule B to the EAR apply to CPP benefits except the exemption provided for in section 7(1)(e) of Schedule B to the EAR, which exempts a portion of CPP benefits determined by the monthly CPP received by the recipient less 1/12 of the recipient's personal annual credits under the Income Tax Act ("ITA"). The effect of this section is to exempt any *taxable* portion of a family unit's CPP benefits from inclusion in the calculation of the family's net income. In this case, however, the monthly amount of the CPP survivor benefits (\$387.87) received by the Appellant's family unit each month is substantially less than 1/12 of the annual personal credits available to the

Appellant, meaning that no portion of the CPP survivor benefit received each month by the Appellant's family unit is exempt under section 7 of Schedule B to the EAR.

Finally, section 8 of Schedule B to the EAR provides for the deductibility of certain education related costs, none of which are applicable to the CPP survivor's benefits received monthly by the Appellant's family unit.

While the Ministry made reference to the authenticity of some of the information submitted by the Appellant, due to unusual facets of some of the letters submitted by the Appellant, including the fact that there were a number of spelling and grammatical errors that were repeated in more than one such letter, the panel determines that it is not required to make any finding on the authenticity of the information in order to deal with this appeal.

Put simply, the EAR requires that the CPP survivor's benefits, received monthly by the Appellant's family unit (regardless of the benefits are payable to the Appellant or the Appellant's oldest child) be included in the calculation of the Appellant's family unit's net income. No portion of it is exempt from inclusion or deductible under sections 1, 6, 7, or 8 of the EAR. In the result, the amount of the survivor benefits must be deducted from the income assistance payable to the Appellant's family unit because they are unearned income. Accordingly, the panel finds that the Reconsideration Decision was a reasonable application of the relevant statutory provisions in the Appellant's circumstances. The Appellant is not successful in this appeal.

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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/January/28

PRINT NAME

Bill Haire

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Lauren Forsyth

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/January/29