

APPEAL NUMBER  
20-00099

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated February 19, 2020 which held that the entirety of the Canada Pension Plan Disability Benefit (CPPD) earned by the appellant, including the amount deducted or withheld for Family Orders Enforcement is to be deducted from the appellant’s disability assistance in accordance with section 24 and schedule B of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”).

**PART D – RELEVANT LEGISLATION**

Section 22(4) Employment and Assistance Act (“EAA”)  
Section 86 Employment and Assistance Regulation (“EAR”)  
Section 1, 24, Schedule A, Schedule B, Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”)

## **PART E – SUMMARY OF FACTS**

The evidence before the Ministry at reconsideration was:

- The appellant is a sole recipient with a PWD designation. Their disability assistance rate is \$1,183.42 per month which includes \$375 for shelter and \$808.42 for support.
- On December 27, 2019 the appellant contacted the Ministry to ask about the disability assistance amounts that were issued to them for December and January.
- The appellant advised the Ministry that they did not actually receive the \$665.06 for CPPD that the Ministry was deducting from their monthly assistance. The appellant advised the Ministry that they only actually received \$490.00 each month for CPPD.
- On a review of the Service Canada file, the Ministry determined that some of the appellant's CPPD payment of \$665.06 was directed elsewhere.
- On January 15, 2020 the Ministry advised the appellant that regardless of where CPPD funds were directed, it was the gross amount of CPPD that is to be deducted from their disability assistance.
- The appellant advised the Ministry that the reduction was sudden and without warning and they cannot budget for the loss without seriously affecting their already humble means.
- The appellant requested that the Ministry correct the "top-up" or payment to reflect the dollar amount they receive for CPPD as the amount deducted is beyond their control and not fair or reasonable.
- The appellant provided a letter dated Feb 5, 2020 form CPPD showing the breakdown of their monthly payment for December, 2019:
  - o Monthly CPP Disability Benefit = \$665.06
  - o Deduction (Family Orders Enforcement (Department of Justice) = \$166.26
  - o Net Monthly Total = \$498.80

The appellant's notice of appeal reiterates what the appellant states in their request for reconsideration.

Specifically:

- They were approved, in late 2012, for a CPPD claim from their workplace injury.
- Their payment for CPPD was delivered through the province until November 2019.
- Now that the payment is delivered through Canada, the payment is less [because of the amount being garnished]

The appellant did not attend the hearing. The panel confirmed that the appellant was given notice of the hearing on April 8, 2020 via email. In accordance with s.86 of the EAR the panel proceeded with the hearing in the absence of the appellant.

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

The issue on appeal is whether the Ministry's decision to deduct the gross amount of the appellant's CPPD earned by the appellant, including the amount deducted by Family Orders Enforcement is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

### Legislation

#### **Section 86 EAR**

86 The practices and procedures of a panel include the following:

- (a) a party to an appeal may be represented by an agent;
- (b) the panel may hear an appeal in the absence of a party if the party was notified of the hearing;

#### **Section 1 EAPWDR**

"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;

#### **Section 24 EAPWDR**

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 B EAPWDR**

1 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, 7 and 8.

3 (1) In this section:

[...]

"qualifying income" means

- (a) earned income, except the deductions permitted under section 2, and

(b) unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act;

[...]

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.

7 (1) The following unearned income is exempt:

[...]

8 (2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of student financial assistance received by the student for the period of study.

The panel finds:

Disability assistance is calculated pursuant to s.24 of the EAPWDR, where the amount paid equals the amount determined under Schedule A EAPWDR minus the amount of the family's net income under Schedule B EAPWDR.

The appellant does not dispute their assistance under Schedule A EAPWDR which is calculated at \$1,183.42.

To determine the amounts that are to be subtracted from the appellant's monthly \$1183.42 payment, we must review Schedule B EAPWDR.

Section 1(d) of Schedule B EAPWDR states a family's net income includes all unearned income, except for the deductions in section 6 and exemptions in sections 3 (for workers compensation), 7 (for mortgages, certain awards, benefits and taxes) and 8 (for education related income).

Unearned income is defined in Section 1(f) EAPWDR as any income that is not earned income, and includes, without limitation, money or value received from any type or class of Canada Pension Plan benefits.

The panel finds that based on the reading of section 1(d) and 1(f) EAPWDR, it was reasonable for the Ministry to conclude that the CPPD benefits were unearned income that must be deducted from the appellant's monthly assistance.

The appellant only receives a portion of their CPPD. Specifically the appellant receives \$498.80 out of the total \$665.06 that they are entitled to receive. The Ministry has confirmed that the other portion of the appellant's CPPD is paid to a federal family enforcement program, Family Orders Enforcement.

The Ministry's relies on Section 1(b) of Schedule B EAPWDR which states that 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. The Ministry also relies on Schedule B section 1(d) which states any unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

The panel has reviewed the permitted deductions under section 2 EAPDWR and finds that those deductions relate to earned income only. The panel had reviewed the permitted deductions under sections 3, 6, 7, and 8 of Schedule B EAPWDR and finds that there is no deduction for Family Orders Enforcement. Further, the panel finds that there are no other deductions in the legislation that will reduce the appellant's income. The appellant argues that the garnishment of their CPPD is out of their control and that the deduction affects their already humble means. The panel finds that despite the hardship on the appellant, the amount garnished from the appellant's CPPD must be included in the Schedule B calculation of the appellant's income. The panel finds that the legislation is clear that CPPD is unearned income and that a garnishment of CPPD is still considered income to the appellant. Further, the

APPEAL NUMBER  
20-00099

panel finds that there are no deductions set out in the legislation that would apply to the appellant to reduce their unearned income.

For these reasons, the panel finds the Ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.

<b>PART G – ORDER</b>	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME MEGHAN WALLACE	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) April 27, 2020

PRINT NAME Katherine Wellburn	
	DATE (YEAR/MONTH/DAY) April 27, 2020
PRINT NAME Roy Wares	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) April 27, 2020