

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated June 24, 2020, in which the ministry found the appellant is not eligible for disability assistance (“DA”) under section 9 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The ministry determined the appellant had unearned income from a monthly Canada Pension disability benefit (“CPPD”) in excess of his DA rate as calculated under section 24 and Schedules A and B of the Regulation. The ministry determined that the CPPD income includes the amount that is being garnished for family support and there is no exemption for CPP under EAPWDR Schedule B.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 1, 9, 24, and Schedules A and B

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's reconsideration decision indicating that:

- On April 27, 2020, the appellant was advised he was not eligible for DA.
- On May 25, 2020, the appellant submitted a Request for Reconsideration ("RFR").
- On June 24, 2020. The ministry completed the review of the RFR.

The ministry record includes the following background information:

- The appellant is a single person in receipt of Medical Services Only ("MSO") from the ministry. The appellant's file was opened in 2014.
- On April 27, 2020, the appellant contacted the ministry regarding his CPPD income. The appellant stated that \$306.59 is garnished from his CPPD income of \$1,226.35 per month. The appellant explained that that the amount he actually receives for CPPD is \$919 per month (after garnishment) and if that amount was recorded in his ministry file, the appellant would be eligible for DA.
- The ministry explained that the appellant's net income includes any garnishments and the full amount of the CPPD benefit is considered in the calculation of the appellant's income. The ministry noted that the "shared data match" with Service Canada showed that the total amount of the CPPD income was \$1,226.35 per month and that \$306.59 per month is withheld.
- The ministry determined that the appellant is not eligible for DA because his net income exceeded the rate of DA for his family size (\$1,183.42 per month). The ministry states that the appellant remains eligible for medical services.
- On May 25, 2020, the appellant requested extra time to submit documentation for the RFR and on June 22, 2020, the appellant provided a letter explaining the garnishment from CPPD as child support as well as correspondence from the Family Maintenance Enforcement Program ("FMEP") and copies of court orders for payment of support and arrears.

2. The RFR, signed by the appellant on May 25, 2020, requesting more time to provide documentation. with two letters from the advocate outlining her argument for the reconsideration. On June 22, 2020, the appellant submitted the following documents:

- A hand-written letter dated June 22, 2020, in which the appellant describes his communications with FMEP regarding arrears on his account including his frustration and disagreement with the amounts owing. The appellant describes his return to court in 2011 for a new family support order and his subsequent disagreement over amounts owing for family support and arrears. The appellant explained that his "health sunk" due to the stress of the situation and he "quit work" for medical reasons.
- A letter from FMEP dated August 10, 2010, advising the appellant of enrollment in the program with FMEP responsible for monitoring and enforcing the support order under the *Family Maintenance Enforcement Act*. The letter states that arrears of \$11,923.00 are owing as per the attached *Record of Payments* showing payments made by the appellant from August 1, 2009 to July 1, 2010.
- A court order for family support and arrears dated July 14, 2009.
- A court order dated May 24, 2011, varying the payments for support and arrears and setting arrears at \$11,380.62 as of May 24, 2011.
- A letter from FMEP dated January 6, 2015, with attached *Special or Extraordinary Expenses Form* regarding the appellant's share of additional expenses for his children.
- A letter from FMEP dated March 30, 2017, stating that some of the special expenses will not be enforced and have been removed from the appellant's account.
- An FMEP *Account Statement* for the period August 10, 2010 to April 2, 2019 consisting of page 1 that shows payments and the balance owing from August 10, 2010 to July 31, 2011.

Additional information

Subsequent to the reconsideration decision the appellant submitted additional documents. The ministry did not raise any objections to the additional submissions.

The panel accepts that following documents regarding support payments and arrears as argument in support of the appellant's position on appeal.

1. A *Notice of Appeal* with a hand-written statement in which the appellant describes his dispute with FMEP over the amount of arrears owing.
2. Copies of documents that were previously submitted with the RFR including court orders from 2009 and 2011; letters from FMEP in August 2010 and March 2017; and page 1 from the FMEP *Account Statement* (August 2010 to April 2019).
3. A pay stub dated November 16, 2012, showing a *Year to Date* deduction for child support.
4. Table of *Federal Child Support Amounts* showing the monthly award based on the payor's income and the number of children.
5. An FMEP *Account Statement* for the period August 10, 2010 to April 2, 2019, consisting of 10 pages that show payments and the balance owing from August 10, 2010 to March 7, 2019. The last page of the document is an *Account Summary* indicating that the balance owing as of April 2, 2019 was \$49,731.36.
6. A letter from a Family Justice Centre dated March 28, 2011, indicating the appellant received service from a Family Justice Counsellor in 2010.

The appellant submitted the following documents as evidence requiring an admissibility determination in accordance with section 22(4) of the *Employment and Assistance Act* ("EAA"):

1. A letter from Department of Justice Canada (*Family Orders and Agreements Enforcement Assist Unit*) dated December 14, 2016, notifying the appellant that the Government of Canada was served with a garnishee summons. The letter states that effective January 17, 2017, the appellant owes support arrears of \$62,036.32 as of the summons issue date of December 12, 2016. The letter advises that any moneys that are payable to the appellant by the Government of Canada may be diverted to pay the creditor named in the summons.
2. A letter from Service Canada dated December 8, 2015, confirming that the appellant's CPPD benefits are subject to deductions for FMEP. The letter states that "CPP is unable to suspend or remove the garnishment made on your CPP disability benefit." The letter indicates that in December 2015, the appellant's monthly CPPD benefit was \$847.11 after the deduction of \$282.37 for FMEP.
3. A letter from Service Canada dated March 2, 2018, advising the appellant that Service Canada does not "add, remove, or control the amount withheld from your monthly benefit rate." The letter indicates that currently, \$294.10 is withheld from the appellant's monthly benefit to be paid to the Department of Justice. The letter advises that if the appellant wishes to contest the withholding, he will need to speak to the Department of Justice directly.

Admissibility of appellant's additional evidence

The ministry did not raise any objections to the letters from the Department of Justice and Service Canada. The panel admits the letters under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel finds that the letters are relevant because they provide detailed information about the garnishment which is the focus of the reconsideration decision. The letters include additional detail on why the garnishment is being made from the appellant's monthly CPPD benefit.

*Oral testimony**Appellant*

At the hearing the appellant elaborated on his argument including his dispute with FMEP over the amount of the support arrears. The appellant explained that the amount being garnished from his CPPD benefits varies with inflation and the court order for support was changed because the appellant's income fluctuated every year when he was employed. The appellant stated that he had to quit work in 2012. He then received insurance benefits, followed by regular income assistance of \$610 per month which was increased to DA of \$910 per month but ended when the appellant started receiving CPPD.

The ministry explained that they have of Memorandum of Understanding with the federal government whose system links with the ministry's system to show any federal payments that the client is receiving. The ministry stressed that the client also has an obligation to declare all of their income to the ministry including federal benefits such as CPPD. In response to questions the ministry explained that the ministry "goes by the amounts on the CPP document" and this includes the situation where the ministry receives conflicting information about a garnishment from Service Canada versus the client.

Admissibility of oral evidence

Neither party raised any objections to the other's information. The panel finds that the evidence regarding the appellant's CPPD garnishment and background before receiving CPPD benefits is relevant because it provides additional detail about the appellant's circumstances. The panel finds that the information about the ministry's process in considering federal benefits is relevant to the treatment of the appellant's CPPD income. The panel admits the testimony under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry’s determination that the appellant is not eligible for DA under section 9 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Was the ministry reasonable in finding that the appellant had unearned income from CPPD benefits in excess of the DA rate as calculated under section 24 and Schedules A and B of the EAPWDR and that the CPPD income includes the garnished amount under EAPWDR section 9(2)?

The ministry based the reconsideration decision on the following legislation:

EAPWDR

Definitions

1(1) In this regulation:

"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 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(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.

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 A

Disability Assistance Rates

(section 24 (a))

Monthly support allowance

2 (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,

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

4 (2) The monthly shelter allowance for a family unit to which section 14.2 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

Schedule B

Net Income Calculation (section 24 (b))

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:
 - (xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);
 - (lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

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.

Exemptions - unearned income

7 (1) The following unearned income is exempt:

[Panel note: amounts for interest payments, government benefits, injury settlements/awards, trust funds, and disability-related costs are the exemptions listed in subsections a to g]

Analysis

Appellant not eligible for DA

Arguments and panel's decision

The ministry's position is that the appellant is not eligible for DA because his monthly net income of \$1,226.35 per month (CPPD benefits) exceeded his assistance rate of \$1,183.42 and there is no exemption for CPP under the EAPWDR unless the CPP is for an orphan's benefit or for a disabled contributor's child's benefit. The evidence in the record which the appellant does not dispute is that the appellant's CPP benefits are for CPP Disability. The panel therefore finds that the ministry was reasonable in determining that the exemptions under section 1 of EAPWDR Schedule B do not apply in the circumstances of the appellant.

The appellant explained that he is only receiving \$919 per month for CPPD, not \$1,226.35, because \$306.59 is garnished from his monthly CPPD benefit. The appellant argues that the ministry should record his income as \$919 per month (after garnishment) and argues that he is eligible for DA based on a net income of \$919 per month which is below the ministry rate of \$1,183.42 per month. The appellant said that if he was receiving DA, he would be eligible for "full medical and a bus pass" and "they cannot garnish PWD benefits."

The ministry argues that the garnishment from CPPD for family maintenance is not a permitted deduction or exemption under the legislation and must be included as income when calculating the appellant's net income. The ministry therefore considered the full CPPD benefit (\$1,226.35 per month) to be the appellant's net income for the purpose of determining eligibility for DA under the legislation.

The panel finds that the ministry was reasonable in treating the garnished amount as part of the appellant's CPPD income because the legislation (section 9(1) of the EAPWDR) clearly states that the client's income includes "an amount garnished, attached, seized, deducted or set off from the income of an applicant." The panel finds that the ministry's interpretation of the legislation was reasonable in the circumstances of the appellant because under section 9 of the EAPWDR, the appellant's CPPD income is \$1,226.35 for month and he is not eligible for DA because his net income exceeds the monthly DA rate of \$1,183.42 under EAPWDR Schedule A.

In the RFR and appeal submissions the appellant argues that the amount of support arrears the garnishment is based on is incorrect. The appellant describes his repeated attempts to have FMEP correct the calculation to no avail. In response to questions, the appellant said that he has also tried "many times" to get Service Canada to look into the accuracy of the amount that is being garnished. The appellant explained that he gets nowhere with Service Canada and is referred back to either FMEP or Department of Justice. The appellant said that he cannot afford to go back to court, and Legal Aid does not cover disputes with FMEP.

At the hearing, the appellant argued that "no one has to justify the numbers" and FMEP is making money on service charges for as long as the appellant is in debt. The appellant added that he understands that the BC government takes into consideration the garnishment but he is asking the ministry "to look at the numbers to see if they are justified." The appellant argued that the ministry should have to look at whether the garnishment is accurate. The appellant submits that it is "criminal negligence" for the ministry "to hide behind government policy and use the numbers from FMEP's statement of accounts."

In response, the ministry explained that FMEP is a separate agency and "it is not under the ministry's jurisdiction to investigate debts." The ministry explained that a similar situation would be when it receives an applicant's tax return; the ministry does not call the Canada Revenue Agency to question the figures on the return. The ministry explained that the ministry is not the garnishor because the garnishment is being made by Service Canada as directed by the Department of Justice. The ministry explained that the treatment of the client's income is directed by legislation and not ministry policy.

The panel finds that the ministry was reasonable to rely on the information from Service Canada per the information-sharing agreement the ministry has with the Government of Canada. The ministry had no role in determining the amount of the garnishment as that was based on figures from FMEP that were forwarded to the Department of Justice by way of a "garnishee summons" as shown in the December 14, 2016 letter from the Department of Justice which the panel admitted into evidence. The panel finds that the appellant's dispute over the garnishment amount is with a separate agency, FMEP, and not the ministry. The panel finds that the ministry reasonably followed the applicable legislation (EAPWDR) in finding that the appellant was not eligible for DA.

Conclusion

The panel finds that the ministry reasonably determined the appellant is not eligible for DA under the EAPWDR because his income exceeds the assistance rate for his family unit; the amount being garnished from CPPD is treated as income; and the deductions or exemptions set out in EAPWDR Schedule B do not apply in the circumstances of the appellant. The panel confirms the reconsideration decision as a reasonable application of the legislation. The appellant is not successful on appeal.

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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020-08-19

PRINT NAME

Linda Smerychynski

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-08-19

PRINT NAME

Adam Rollins

DATE (YEAR/MONTH/DAY)

2020-08-19