

APPEAL NUMBER  
2020-00189

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of July 21, 2020 (the “Reconsideration Decision”), in which the Ministry determined that the Appellant’s July disability assistance was subject to a deduction of \$881.24, being the Canada Pension Plan Disability (“CPPD”) amount received by the Appellant or which the Appellant was eligible to receive in the month of May, 2020, because the CPPD is “unearned income”, pursuant to section 1 of the *Employment and Assistance for Persons with Regulation* (“EAPWDR”), and is not exempt or deductible under any of the provisions of Schedule B to the EAPWDR.

**PART D – RELEVANT LEGISLATION**

EAPWDR, sections 1, 9, 24, 29, and Schedule A and B

## PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of disability assistance who receives monthly assistance of \$808.42, a \$52.00 transportation supplement, and a shelter allowance of \$375.00 per month, for a total of \$1,235.42.

The information before the Ministry at the time of the Reconsideration Decision included the Appellant's Request for Reconsideration, dated June 29, 2020 ("RFR"), which included:

- a summary from the Ministry, indicating that the Appellant had been issued a lump sum CPPD payment in May, 2020 in the amount of \$1,481.04, which exceeded the Appellant's eligibility for disability in July, 2020, making the Appellant ineligible for disability assistance in July, 2020; and
- a letter from the Appellant, which indicates that:
- the Appellant did not receive the CPPD payment of \$1,481.04 in May; and
- the \$1,481.04 payment that was supposed to have been received was comprised of two amounts, a \$590.00 "clawback" and the Appellant's monthly CPPD payment of \$880.00;
- the Appellant also indicated that the COVID-19 emergency benefit had not been paid.

In the Reconsideration Decision, the Ministry held that the Appellant's CPPD payment in the amount of \$1,481.04 consisted of two amounts, \$881.24, being the Appellant's monthly CPPD for May, 2020, and \$599.80, being retroactive CPPD for the months of December, 2018 to March, 2019. The Ministry concluded that the retroactive payment was not deductible from the Appellant's July, 2020 disability assistance but that the \$881.24 CPPD amount received for the month of May, 2020 was deductible from the Appellant's July, 2020 disability, reducing the Appellant's eligibility to \$354.18 for July, 2020.

In the Appellant's Notice of Appeal, dated July 27, 2020, the Appellant stated that:

- there were "computer errors" on dates;
- the Appellant had talked to Service Canada about the missing cheques; and
- the Appellant had a voicemail message from Service Canada, indicating that the cheques were cancelled;

The Notice of Appeal also included a statement of payment, dated July 9, 2020 (the "Statement"), from the Ministry to the Appellant, showing the monthly disability amount of \$1,235.42 being paid by direct deposit.

The Appellant did not attend the hearing. After confirming that the Appellant had received notice of the date and time of the hearing, the hearing proceeded in the Appellant's absence as allowed under section 86(b) of the *Employment and Assistance Regulation*.

At the hearing, the Ministry advised that the Statement was for the Appellant's July disability assistance and was paid in full while this appeal was still pending. The Ministry advised that the Appellant had not provided evidence that the May CPPD cheque had not been received and that the evidence that the Ministry likely would have accepted as evidence of same included written confirmation from Service Canada that the May CPPD cheque had been cancelled or that a stop payment had been put on the cheque. The Ministry also stated that copies of bank statements showing that no CPPD cheque had been deposited would also likely have been acceptable. The Ministry confirmed that a data match with Service Canada indicated that the Appellant was definitely eligible for CPPD in May and that the CPPD was unearned income that was not deductible or exempt from inclusion in the calculation of the Appellant's monthly income for July. The Ministry also confirmed that the Appellant had, in fact, received the COVID-19 emergency benefit.

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The panel admits the Statement and the evidence provided by the Ministry as evidence that is not part of the record but which the panel considers reasonably necessary for a full and fair disclosure of all matters related to the Reconsideration Decision, pursuant to section 22(4) of *Employment and Assistance Act*.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry reasonably determined that the Appellant's July disability assistance was subject to a deduction of \$881.24, being the CPPD amount which the Appellant received or was eligible to receive for the month of May, 2020 and which was unearned income, as defined by section 1 of EAPWDR, which is not exempt or deductible under any of the provisions of Schedule B to the EAPWDR.

### ***Applicable Legislation***

Section 9 of the EAPWDR sets out limits on income which may be received by a recipient in a given month as follows:

#### **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.

Section 24 of the EAPWDR governs the maximum amount of disability which may be paid to a recipient in a given month:

#### **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.

Section 1(1)(a) of the EAPWDR expressly provides that all classes of CPP benefits are categorized as "unearned income":

**"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;

...

Section 29 of the EAPWDR sets out the reporting requirements for recipients of disability assistance:

### **Reporting requirement**

**29** For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form specified by the minister:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

Sections 1, 2, and 4 of schedule A to the EAPWDR set out the maximum amount of disability assistance and shelter allowance payable each month before accounting for deductions of net income:

**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.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

**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 warrant in section 14.2 [*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
- (a.1) Repealed. [B.C. Reg. 193/2017, s. 9 (a).]
- (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 (\$)
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1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	808.42
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...

**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 warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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	Column 2
	<b>Family Unit Size</b>	<b>Maximum Monthly Shelter</b>
1	1 person	\$375

Section 1 of Schedule B to the EAPWDR set out what income must be included and what types of income are exempt from inclusion in the calculation of a family unit's net income. Subsection (a) of Schedule B to the EAPWDR provides an exhaustive list of specific items that are exempt from inclusion in the calculation. Subsections (c) and (d) of section 1 of Schedule B to the EAPWDR set out what must be included in the calculation of a family's net income:

**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,

...

- (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.

Section 3 of Schedule B to the EAPWDR sets out annual exemption limits for qualifying income and defines qualifying income as follows:

**"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;

Sections 6, 7, and 8 of Schedule B to the EAPWDR describe specific items that are either deducted from unearned income and list what types of unearned income is exempt:

#### **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** (0.1) In this section:

**"disability-related cost"** means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] 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 12 (1) of this regulation;

**"intended registered disability savings plan or trust"**, in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person 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 10 [*asset limits*] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities*] 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 12 (1) 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 12.1

(2) [*temporary exemption of assets for person with disabilities or person 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 12 (1) of this regulation;

- (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation;
  - (iii) money expended by a person referred to in section 12.1 (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.

### **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 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.

### ***Panel Decision***

Sections 2 and 4 of Schedule A to the EAPWDR provide that sole recipients of disability assistance are entitled to \$808.42 per month in disability assistance. The Appellant is also eligible for a monthly shelter allowance of \$375.00 per month and receives a \$50.00 monthly transportation supplement. The total of all amounts for which the Appellant is eligible each month is \$1,243.42.

Section 24 of the EAPWDR provides that a recipient's monthly net income must be deducted from the recipient's monthly disability assistance.

The Appellant's CPPD is unearned income, as defined in section 1(1)(a) of the EAPWDR. It is also not exempt from inclusion in the calculation of the Appellant's monthly net income, under subsections (i) through (lviii) of section 1(a) of Schedule B to the EAPWDR.

Pursuant to section 1(d) of Schedule B to the EAPWDR, in calculating a recipient's monthly net income all unearned income must be included, other than the exemptions and deductions expressly provided for in sections 3, 6, 7, and 8 of Schedule B to the EAPWDR.

The CPPD received by the Appellant is not compensation paid under the Workers Compensation Act and, as such, does not meet the definition of qualifying income under section 3.

Likewise, the CPPD does not fall within any of the categories of exemptions or deductions set out in sections 6, 7, and 8 of Schedule B. While section 7(1)(e) of Schedule B to the EAPWDR does permit for some part of Canada Pension Plan benefits to be deductible, the formula for calculating the exemption

results in only the taxable portion of Canada Pension Plan being deductible. Where no tax is payable, as is the case with the Appellant's CPPD, no deduction is available and none of the Appellant's May, 2020 CPPD disability is exempt from being included in calculating the Appellant income.

Because of section 29 of the EAPWDR, it is the Appellant's July disability assistance from which the May CPPD amount is to be deducted.

The Appellant states that the May CPPD cheque was never received. Unfortunately, the Appellant did not provide the Ministry with any documentary evidence to show that the CPPD for May had not been received or that the Appellant was not eligible for CPPD in May, 2020. Even had the Appellant not received the CPPD for May, 2020, there was no evidence before the Ministry that the reason for this was because the Appellant was not eligible for it. In the result, the panel finds that the Ministry's determination that the Appellant had received \$881.24 in CPPD for the month of May, 2020 was reasonably supported by the evidence. The panel also finds this to be a reasonable application of Schedule B to the EAPWDR which requires the inclusion of Canada Pension Plan benefits in the calculation of a family unit's monthly net income.

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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/August/31

PRINT NAME

Melissa McLean

SIGNATURE OF

MEMBER

DATE (YEAR/MONTH/DAY)

2020/August/31

PRINT NAME

Donald Stedeford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/August/31