

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 05 August 2020 that determined that the appellant would not be denied August 2020 disability assistance; however, his monthly Canada Pension Plan Disability (CPPD) amount of \$952.87 must be deducted from his monthly disability assistance base rate. The ministry determined that the \$952.87 amount is that part of a lump sum retroactive CPPD payment of \$9,457.62 the appellant received in June 2020 that is considered the CPPD payment for June 2020. Pursuant to sections 1 and 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), and sections 1 and 11 of Schedule B of the EAPWDR, this must be treated as unearned income and is considered to have been received by the recipient in that month. In accordance with section 24 of the EAPWDR, this amount must then be deducted from the appellant's assistance rate.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1 and 24, and Schedule B, sections 1, 3, 6, 7, 8, and 11..

**PART E – SUMMARY OF FACTS**

**Information before the ministry at reconsideration**

1. The appellant is a sole recipient of disability assistance whose file opened on 06 August 2019.
2. The appellant's monthly rate of disability assistance is \$1183.42, comprised of \$808.42 support and \$375.00 shelter.
3. On 15 July 2020 the ministry received a shared data match with Service Canada showing that the appellant received a lump sum payment for CPPD in June 2020 of \$9457.52. According to the data match, the appellant's effective date of CPPD eligibility was September 2019.
4. On 20 July 2020 the ministry advised the appellant that because the retroactive CPPD lump sum payment is over and above the monthly disability assistance entitlement, there is no eligibility for August assistance. The appellant was offered and accepted the right to reconsideration
5. The appellant's Request for Reconsideration is dated 22 July 2020. Under Reasons, the appellant writes:  
"I was told by CPP Disability that this payment would go with my PWD payment each month to make additional funds to live off along with my PWD payment. I was not told that by receiving this benefit that I would lose my PWD entitlement by receiving the CPP disability payment. I would like to request a reconsideration because without working, it's very tough to make ends meet."

**Notice of Appeal**

The appellant's Notice of Appeal is dated 11 August 2020. Under Reasons, the appellant writes:  
"I was told by CPP Disability that this would go along with my PWD payment. I was not anticipating to lose my monthly PWD amount of \$1235.00 that I require to live off of. I feel your decision was not thought through as this is a very common mistake and someone who has a mental disability could easily get this wrong or misinterpret the wrong facts."

**The hearing**

Neither the appellant nor a representative of the ministry attended the hearing. After confirming that both parties were notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in its decision that a monthly CPPD amount of \$952.87 must be deducted from the appellant's disability assistance for August 2020.

More specifically, the issue is whether the following ministry determination is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant:

- That the \$952.87 amount that is part of a lump sum retroactive CPPD payment of \$9,457.62 the appellant received in June 2020 is considered the CPPD payment for June 2020. Pursuant to section 1 of the EAPWDR, and section 11 of Schedule B of the EAPWDR, this must be treated as unearned income and is considered to have been received by the recipient in that month. In accordance with section 24 of the EAPWDR, this amount must then be deducted from the appellant's assistance.

The relevant legislation is fully reproduced in an Appendix to the Record of Ministry Decision (except for section 11 of Schedule B – see below). The following are relevant excerpts from the legislation:

From the 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;

### 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.

And from Schedule B of the EAPWDR:

### Net Income Calculation

(section 24 (b) )

### Deduction and exemption rules

1

(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*;

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

**Annual exemption — qualifying income**

**3** [Not applicable, refers to Annual Earned Income Exemption]

**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**

(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*;

Note: Section 7 is not applicable in the appellant's situation, as the formula  $(A-B) \times C < 0$ , since the appellant's monthly CPPD rate A is ~ \$950, less than B, the equivalent of the "basic personal amount" shown on line 30000 of the Income Tax and Benefit Return divided by 12, or \$12,069/12 for 2019. This amount will increase for 2020 due to the inflation adjustment built into the formula.

**Minister's discretion to exempt education related unearned income**

**8** [Not applicable to this appeal]

**Backdated CPP treated as unearned income**

**11** (1) In this section, "pension benefit" means a pension or other payment under the *Canada Pension Plan* (Canada).

(2) If

- (a) disability assistance is provided to a family unit for a calendar month or any portion of a calendar month that would not have been provided if a pension benefit had been paid for that calendar month, and
- (b) subsequently a pension benefit becomes payable or payment of a pension benefit may be made under the *Canada Pension Plan* (Canada) to a recipient in the family unit for that calendar month or any portion of that calendar month

the amount of the pension benefit that becomes payable for that month or portion of that month must be treated as unearned income and is considered to have been received by the recipient in that month.

## Analysis

### *The position of the appellant*

The appellant's position, as stated in the Notice of Appeal, is that, "I feel your decision was not thought through as this is a very common mistake and someone who has a mental disability could easily get this wrong or misinterpret the wrong facts."

### *The ministry's position*

In the reconsideration decision, the ministry stated that it regrets that the appellant anticipated that his CPPD would be in addition to his PWD assistance; however, legislation does not allow for discretion when calculating the net income of the family unit.

The ministry noted that the shared data match with Service Canada shows that the appellant received a lump sum payment of \$9,457.62 in June. As the appellant's regular payment is \$952.87, the ministry finds that \$8504.75 is a retroactive amount to the effective date CPPD eligibility of September 2019.

As per EAPWDR Schedule B, Section 11, if the appellant received assistance that he would not have received had he been in pay of CPPD, and CPPD provides payment for those respective months, then the retroactive amount of CPPD is considered received in the month that it was provided for. As the appellant became eligible for assistance in August 2019 and the effective date of eligibility for CPPD is September 2019, the appellant received assistance between September 2019 and July 2020 that would not have been received if being in pay of CPPD benefits. Therefore, the \$8504.75 retroactive payment from CPPD is considered to be received in the months it was intended for and not included in the net income calculation for June 2020.

The ministry found that the appellant's monthly CPPD of \$952.87 is unearned income as defined by the legislation. The ministry further found that this type of income is not exempt because it is not an orphan's benefit or a disabled contributor's child benefit payable under the Canada Pension Plan. Therefore \$952.87 must be deducted from the appellant's assistance rate of \$1183.42.

### *Panel finding*

The reconsideration decision can be seen as addressing two separate but related issues:

- The general approach to if and how CPP benefits are a factor in the ministry's calculation of monthly assistance provided to recipients of disability assistance, and
- The special case of how lump sum retroactive CPP benefits are treated in the calculation of monthly assistance.

### The general approach to CPP benefits

Section 24 of the EAPWDR provides the basic formula for the calculation of the amount of

disability assistance to or for a family unit for a calendar month:

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

In the appellant's case, the amount determined under Schedule A is \$1183.42, comprised of \$808.42 support and \$375.00 shelter. This base monthly amount is not in dispute in this appeal.

Section 1 of Schedule B serves as the starting point for making the net income determination required under EAPWDR section 24. As the ministry noted, under subsection (a) of section 1, of the sources of income listed (i) through (ix), the only CPP benefits subject to exemption from the net income calculation are those relating to orphan's benefits and a disabled contributor's child benefit, neither of which apply to the appellant.

Except for the exemptions listed in subsection (a), subsection (d) states that all *unearned* income must be included. *Unearned income* is defined in EAPWDR section 1(1) as any income that is not earned income, and includes, without limitation, money or value received from a list of 25 sources of income, including (f) any type or class of Canada Pension Plan benefits. Under Schedule B, subsection (d) of section 1, the only deductions permitted are under section 6 and any income exempted under sections 3, 7 and 8. As can be seen from the extracts of the legislation above, Sections 3, 6, and 8 do not apply to the appellant's circumstances. The deduction provided under section 7(e) also does not apply, as this section relates to income tax that would be payable if the CPP amount was greater than the "Basic personal amount," not the case given the appellant's CPPD rate.

On this basis, the panel finds that the ministry was reasonable in finding that the appellant's CPPD needs to be included in the calculation of net income, as required under section 24(b), and deducted from the Schedule A amount.

#### The special case of lump sum retroactive CPP benefits

As the ministry found at reconsideration, section 11 of Schedule B applies to a situation where a recipient of disability assistance receives a lump sum retroactive CPP payment. Section 11 provides that if there is an overlap between the period when the recipient is provided disability assistance and the months covered by the retroactive CPP payment, the amount of the CPP benefit that becomes payable for a month or portion of a month must be treated as unearned income and is considered to have been received by the recipient in that month. Since the reconsideration decision related only to August 2020 benefits, and as the shared data match with Service Canada showed that \$952.87 of the CPPD lump sum payment was for June 2020, the panel finds that the ministry was reasonable in its determination that this amount be deducted from the appellant's assistance rate in calculating assistance for August 2020.

#### Panel note

In accordance with the principles of administrative fairness and ministry policy, the panel understands that the ministry strives to provide substantive reasons for its written decisions. According to ministry policy explained on its website, this includes answering the question "what

legislative criteria (criterion) were (was) not met and **why** not?” In its policy the ministry states that, “The reasons must reference the specific legislated eligibility criteria (criterion) that are (is) not met and specify the circumstances/facts the client presented, or failed to present, that the ministry assessed and determined were the reasons the client did not meet the legislated criteria.”

In meeting these requirements, the panel notes that the ministry not only references the applicable legislation in the body of the decision but also reproduces relevant sections in an appendix to the decision. This practice was followed in this case, except that section 11 of Schedule B, the crux of the ministry’s decision, was missing from the legislation appended to the decision and to the legislation appended to the original decision.

The panel has reviewed the summary of Section 11 in the body of the decision and finds it to be an accurate summary of the legislated text. Considering this, and that the text can be readily found on the ministry’s and tribunal’s websites and on bclaws.ca, the panel concludes that there are insufficient grounds to find the ministry’s decision unreasonable based on inadequate reasons.

### **Conclusion**

The panel finds that the ministry’s decision that that a monthly CPPD amount of \$952.87 must be deducted from the appellant’s disability assistance for August 2020 is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry’s decision. The appellant is thus not successful in this appeal.

APPEAL NUMBER  
2020-00196

**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

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 September 03

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 September 03

PRINT NAME

Glenn Prior

DATE (YEAR/MONTH/DAY)

2020 September 03