

APPEAL NUMBER
2020-00203

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 7, 2020, which determined that the appellant was not eligible for reconsideration of the Canada Pension Plan tax exemption prior to June 2020, as per section 71(2) of the Employment and Assistance for Persons with Disabilities Regulation.

As well, the ministry determined that the appellant is not currently eligible for the Canada Pension Plan tax exemption as per schedule B, section 7(1)(e) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 71 and schedule B, section 7(1)(e)

PART E – SUMMARY OF FACTS

Relevant Evidence Before the Minister at Reconsideration

Ministry records show:

- The appellant is a sole recipient and has Persons with Disabilities designation.
- His monthly Canada Pension Plan (CPP) benefit of \$373.66 is deducted from his assistance each month.
- On June 10, 2020 the appellant contacted the ministry to enquire about the CPP tax exemption. The appellant explained that he also has employment earnings which results in having to pay taxes on his CPP income. The ministry informed him that he does not qualify for the CPP tax exemption because his CPP income is not high enough.
- The appellant provided confirmation of his CPP income received for April, May and June 2020 and asked the ministry to review the amount of CPP deducted from his assistance. The ministry is addressing this matter separately.
- In its decision the ministry provided a link to the Canada Revenue Agency (CRA) website, which verifies that for individuals whose net income is less than or equal to \$150,473, for 2020 the basic personal amount will increase to \$13,229.

Request for Reconsideration of CPP Tax Exemption (June 21, 2020)

Submissions

Tax Documents

CRA Notice of Assessment Tax Year 2016 (Date Issued: June 19, 2017)

CRA 2017 Assessment (Date of assessment: June 11, 2018)

CRA 2018 Assessment (Date of assessment: May 30, 2019)

Tax Return Summary for 2019 taxation year (n.d.)

- Personal tax credits - \$12,069
- Taxable income - \$25,220.30
- Total tax payable - \$2,251.07
- Balance owing - \$766.96

Letters regarding allowable earning exemptions (AEE)

from the ministry to the appellant

(July 29, 2016)

- advising him he reported income that qualifies for the AEE for 2016 and that he is close to reaching his AEE limit for 2016.

(September 18, 2017)

- advising the AEE limits have increased and the change is effective October 1, 2017.

(August 23, 2019)

- advising he is close to reaching his AEE limit for 2019.

(December 13, 2019)

- advising he has reached his AEE limit for the year.

Copy of "Disability Act", section: CPP tax exemption (n.d.)

Copy of section 118)(1)(c) and 117.1 of the Canada *Income Tax Act* (last amended June 1, 2020)

Letter to the appellant from Service Canada (July 14, 2020)

- confirming his current CPP gross monthly entitlement is \$373.66.

Reason for Request for Reconsideration

The appellant states he's paid income tax for the last four years because he has both CPP and employment taxable earnings.

He states the ministry's formula $(A - B) \times C = \text{_____}$ is only a method of applying the "Disability Act"... "that ESTIMATES the monthly tax liability" and if this differs from the actual tax liability under the law, the Canada *Income Tax Act* must prevail.

The appellant states according to the ministry's formula $(A - B) \times C$

A – is monthly gross CPP benefit;

B – is 1/12 of the amount determined under section 118(1)(c) of the *Income Tax Act* as adjusted under section 117.1 of that Act; and

C – is the sum of the percentage of taxable amounts set out under section 117(2)(a) of the Canada *Income Tax Act* and section 4.1(1)(a) of the *Income Tax Act*.

Using this formula, the appellant states for the tax year 2019, the ministry's calculation would be:

A – \$4,286.04 per year divided by 12 months = \$357.17

B – total spousal income adjusted by his net income tax liability (\$0.00) + (\$766.96) divided by 12 months = \$63.91

C – total income tax % rate for the year 2019 = 20.06%

$(\$357.17 - \$63.91) \times 20.06\% = \58.83

$\$58.83$ per month $\times 12$ months = \$705.93 per year

- almost exactly his 2019 Income Tax liability of \$766.96

Using this same formula, the appellant provides an alternate calculation, using his gross income tax liability of \$2,251.07 - which is more income tax liability.

A – \$357.17 average per month

B – $(\$0.00 + \$2,251.07)$ divided by 12 months = \$187.58

C – total income tax % rate = 20.06%

$(\$357.17 - \$187.58) \times 20.06\% = \34.02

As $\$34.02/\text{month} \times 12$ months = \$408.24/year is less than the previous calculation by \$297.69 (even though his actual income tax liability is greater), the appellant states that according to the ministry's estimated formula, the greater the income tax liability the less CPP income tax deduction allowed. It seems to contradict the intent of the Act, which is to help limit the CPP income tax liability.

He suggests the ministry's estimating formula of $(A - B) \times C$ may be wrong as it does not work if one has income other than CPP or other deductions. His gross CPP benefit of $\$357.17 \times 20.06\% = \71.65×12 months = \$859.77 or within \$90.00 of his actual net income tax of \$766.96 for the 2019 year. The difference is an additional \$25.00 per month he had taken off, for four months, of his income from his employer to help with his CPP tax liability. ($4 \times \$25.00 = \100.00) which would increase his tax liability to \$866.96.

According to the ministry's formula, his estimated monthly income tax deduction should be approximately \$58.83 per month and his actual income tax liability (according to the Canada *Income Tax Act*) is \$63.91 per month. Since his total income tax liability is \$766.91 for 2019, and his employment income has income tax deducted, the only income left is his CPP, which does not have income tax deducted. Therefore, his CPP benefit is completely taxable at the tax rate of 20.06% or \$71.65 per month.

The appellant is requesting a reconsideration of his CPP income tax exemption for all four years based on his actual income tax liability under the Canada *Income Tax Act* and not the ministry's estimating formula, so his monthly gross CPP benefit times the income tax % rate for the year, equals his monthly CPP tax exemption. He states his total income tax exemption for the four years would be \$2,439.28 and this is what the ministry owes him for his total CPP tax exemptions.

Request for Reconsideration of CPP Tax Exemption (July 20, 2020)

The appellant states he has surmised that this matter will take a policy change on behalf of the ministry to correct a fundamental flaw in the CPP tax exemption process but thought he should bring it to the ministry's attention to see how it wants to proceed. He had his basic assumptions on how the CPP tax exemption formula works confirmed by a supervisor in the ministry's CPP department. His accountant has confirmed that his understanding of the *Income Tax Act*, sections 117.1 and 118(1)(c) is correct and his advocate has confirmed that his application of the formula is correct and that this is a policy change to be handled by a lawyer.

Additional Information

Appellant

Notice of Appeal (August 25, 2020)

The appellant states he doesn't apply for a CPP tax exemption. The ministry is supposed to implement it so there is no 20 day timeline. As well, the appellant states he was not earning \$373.66 and also the ministry does not seem to know what section 117.1 of the Tax Act is as it has used totally incorrect figures. The appellant attached a copy of section 117.1 of the Tax Act in his submission, which the ministry said he should look up.

At the hearing, the appellant added that when he applied for his CPP in April 2016, he didn't receive his benefits until November, and in 2016 only received CPP for November and December 2016 so it would have made it impossible for him to make a decision on the 20 day time limit for reconsideration of the decision. He added that the ministry did not advise him that he wasn't getting a tax exemption.

The appellant also stated that the ministry used incorrect information in calculating his tax exemption. His income for 2019 was not \$150,473 but \$25,220.30. As well, his basic tax exemption is \$12,069, as calculated by a tax preparation firm, not \$13,229, which was used in the ministry's formula.

Ministry

At the hearing, the ministry relied on its reconsideration decision. The ministry also added that the information it uses in the calculation is what is provided, but the ministry can amend the calculation if new information is submitted. For calculating the CPP tax exemption, the ministry relies on the Canada Revenue Agency (CRA) website to determine the basic tax exemption, and receives the amount of CPP benefits through a federal/provincial data match.

The panel determined that the additional information is considered argument and therefore an admissibility determination under section 22(4) of the *Employment and Assistance Act*, is not required.

PART F – REASONS FOR PANEL DECISION

The issues on appeal are:

1. Whether the ministry's reconsideration decision, which determined that the appellant was not eligible for reconsideration of the CPP tax exemption, prior to June 2020 as per section 71(2) of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.
2. Whether the ministry's reconsideration decision, which determined that the appellant is not currently eligible for the CPP tax exemption as per schedule B, section 7(1)(e) of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Reconsideration and appeal rights

- 16** (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:
- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
 - (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
 - (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
 - (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
 - (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
 - (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].

Employment and Assistance for Persons with Disabilities Regulation

How a request to reconsider a decision is made

- 71** (1) A person who wishes the minister to reconsider a decision referred to in section 16 (1) [*reconsideration and appeal rights*] of the Act must deliver a request for reconsideration in the form specified by the minister to the ministry office where the person is applying for or receiving assistance.
- (2) A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 16 (1) of the Act...

Schedule B

Net Income Calculation (section 24 (b))

Exemptions — unearned income

7 (0.1) In this section:...

(1) The following unearned income is exempt:...

(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*;

Income Tax Act (Government of British Columbia)

Amount of tax payable

4.1 (1) Subject to subsections (2), (3) and (5) to (7) of this section and to sections 4.52 and 4.8 to 4.84, the tax payable under this Act by an individual on the individual's taxable income for the 2008 and subsequent taxation years is as follows:

(a) if the taxable income does not exceed \$30 004, 5.06% of the taxable income;...

Income Tax Act (Government of Canada)

117 (1) ...

Rates for taxation years after 2015

(2) The tax payable under this Part by an individual on the individual's taxable income or taxable income earned in Canada, as the case may be (in this Subdivision referred to as the "amount taxable") for a taxation year is

(a) 15% of the amount taxable, if the amount taxable is equal to or less than the amount determined for the taxation year in respect of \$45,282...

Personal credits

118 (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula...

Appellant Argument

The appellant argues that he works because the ministry forced him to take his CPP early, which reduces his CPP by 36%. He was on the very bottom edge of poverty before, but now with a loss of 36% of his CPP it has pushed him to a level of income that is unsustainable. Due to the thousands of dollars the ministry has taken from him for the past four years, he is either forced to work or live below the poverty line for the rest of his life. For the past four years he has been trying desperately to get full-time work and get off of disability, but every year he has a "Political Medical Intervention", which forces him to take months off work, losing full-time employment and credibility with his employer. So even with his best efforts, he has not been able to acquire full-time employment or stop his disability. Therefore, he is extremely worried at what his retirement at age 65 will bring.

The appellant argues the ministry owes him \$2,439.28 for his CPP tax exemptions, as this amount should have been exempt from his CPP earnings over the past four years.

At the hearing, the appellant added that when he applied for his CPP in April 2016, he didn't receive his benefits until November, and in 2016 only received CPP for November and December 2016 so he argues it would have been impossible for him to make a decision on the 20 day time limit for reconsideration of the decision. The appellant also stated that the ministry did not advise him that he wasn't getting a tax exemption.

As well, the appellant argues the ministry's CPP tax exemption formula is only a method of applying the "Disability Act" that estimates the monthly tax liability and if this differs from the actual tax liability under the law, the Canada *Income Tax Act*, the law must prevail. He also argues that the ministry is not implementing its own formula correctly under the law because it is not using taxable income, which includes earned income, and if the correct taxable income is used, the estimating formula no longer works.

At the hearing the appellant added that the ministry used incorrect information in calculating his tax exemption. His income for 2019 was not \$150,473 but \$25,220.30. As well, his basic tax exemption was \$12,069, as calculated by a tax preparation firm, not \$13,229, which was used in the ministry's formula.

Ministry Argument

The ministry argues that the scope of this reconsideration decision is limited to the application of the ministry's current legislation and there is no authority to assess the applicability of federal laws or a proposed policy change.

The ministry argues further that as the appellant only requested a reconsideration of his CPP tax exemption for 2016, 2017, 2018, 2019 and the potential for a CPP tax exemption, in June 2020, his opportunity to request reconsideration prior to June 2020 is not available because it was not received within 20 business days of being notified. The ministry states the appellant was notified monthly of the ministry's decisions regarding his amount of disability assistance since he began receiving CPP in 2016.

The ministry's position concerning the calculation of the appellant's CPP exemption is as follows:

The CPP tax exemption in schedule B section 7(1)(e) is $(A - B) \times C$. A is the appellant's gross monthly CPP and B is his monthly basic personal tax exemption. C is the appellant's combined federal and provincial tax rates for his income bracket. If the calculation produces a negative result, the CPP tax exemption is not available. A and B are not affected by: total income from all sources, Service Canada tax deductions, or taxes owed or paid. C is affected by total income from all sources.

The ministry's data match with Service Canada and Service Canada's letters confirm the appellant's current gross monthly CPP benefits received as \$373.66 per month - so A is \$373.66.

Canada's *Income Tax Act* indicates, for a single person with no dependents and a net income less than \$150,473, the amount under section 118(1)(c) and adjusted under section 117.1 is \$13,229. One twelfth of \$13,229 is \$1,102.42 - so B is \$1,102.42.

The tax documents the appellant submitted confirm his 2019 taxable income is \$25,220.30, making the amount under section 117(2)(a) of Canada's *Income Tax Act*, 15% (because \$25,220.30 is less than \$45,282) and the amount under BC's *Income Tax Act* Section 4.1, 5.06% (because \$25,220.30 is less than \$30,004) - so C is the sum of these amounts, which the appellant correctly calculated as 20.06%.

Therefore, the ministry argues that for the appellant's current circumstances, the calculation set out in schedule B, section 7(1)(e) of the EAPWDR is:

$$(\$373.66 - \$1,102.42) = -\$728.76 \times 20.06\% = -\$146.19$$

The ministry concluded as the calculation produces a negative result, there is no CPP tax exemption available to the appellant.

Section 16(1), EAPWDA - reconsideration and appeal rights

In his reconsideration request (June 21, 2020), the appellant requested a reconsideration of his CPP income tax exemption for all four years based on his actual income tax liability under the law of Canada *Income Tax Act* and not the ministry's estimating formula, so his monthly gross CPP benefit times the income tax % rate for the year, equals his monthly CPP tax exemption.

In his reconsideration request (July 20, 2020), the appellant argues that this matter may take a policy change on behalf of the ministry to correct a fundamental flaw in the CPP tax exemption process but thought he should bring it to the ministry's attention to see how it wants to proceed.

The ministry argues that the scope of this reconsideration decision is limited to the application of the ministry's current legislation and there is no authority to assess the applicability of federal laws or a proposed policy change.

The panel notes section 16(1) of the EAPWDA describes the decisions made under the EAPWDA the minister may be requested to reconsider and there are no provisions under this legislation to assess the applicability of federal legislation nor proposed policy change. Therefore, the panel finds, the ministry

reasonably determined it has no authority to assess the applicability of federal laws or a proposed policy change, within this reconsideration decision.

Section 71(2), EAPWDR – how a request to reconsider a decision is made

The appellant requested a reconsideration of his CPP income tax exemption for 2016, 2017, 2018, and 2019. He argues that the ministry owes him \$2,439.28 for his CPP tax exemptions as this amount should have been exempt from his CPP earnings over the past four years.

At the hearing, the appellant added that when he applied for his CPP in April 2016, he didn't receive his benefits until November, and in 2016 only received CPP for November and December 2016 so it would have been impossible for him to make a decision on the 20 day time limit. He also stated that the ministry did not advise him that he wasn't getting a tax exemption.

The ministry argues that as the appellant only requested a reconsideration of his CPP tax exemption for 2016, 2017, 2018, 2019 and the potential for a CPP tax exemption, in June 2020, his opportunity to request reconsideration prior to June 2020 is not available because it was not received within 20 business days of being notified and the appellant was notified monthly of the ministry's decisions regarding his amount of disability assistance since he began receiving CPP in 2016.

Section 71(2) states "A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 16(1) of the Act..."

The panel finds there is insufficient evidence to determine that the ministry is required to advise the appellant that he wasn't getting a tax exemption. The panel finds as the appellant was notified monthly of the ministry's decisions regarding his amount of disability assistance since he began receiving CPP in 2016, the ministry reasonably determined that the appellant's opportunity to request reconsideration prior to June 2020 is not available as the request was not received within 20 business days of being notified as is required under section 71(2).

Section 7(1)(e), schedule B, EAPWDR – exemptions – unearned income (CPP tax exemption)

Section 7(1)(e) states the following unearned income is exempt:

The portion of CPP benefits calculated by the formula $(A - B) \times C$, where

A = the gross monthly amount of CPP benefits received

B = in respect of a family unit comprised of a sole recipient, 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

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*

The appellant argues the ministry is not implementing its own formula correctly under the law because it is not using taxable income, which includes earned income, and if the correct taxable income is used, the estimating formula no longer works. At the hearing he added that the ministry used incorrect information in calculating his tax exemption. His income for 2019 was not \$150,473 but \$25,220.30. As well, his basic tax exemption is \$12,069, as calculated by a tax preparation firm, not \$13,229, which was used in the ministry's formula.

At the hearing the ministry stated that for calculating the CPP tax exemption, the ministry relies on the CRA website to determine the basic tax exemption and receives the amount of CPP benefits through a federal/provincial data match.

The following outlines the ministry's argument that it correctly calculated the CPP exemption.

- The ministry's data match with Service Canada and Service Canada's letters confirm the appellant's current gross monthly CPP benefits received as \$373.66 per month - so A is \$373.66.
- Canada's *Income Tax Act* indicates, for a single person with no dependents and a net income less than \$150,473, the amount under section 118(1)(c) and adjusted under section 117.1 is \$13,229. One twelfth of \$13,229 is \$1,102.42 - so B is \$1,102.42.
- The tax documents, the appellant submitted, confirm his 2019 taxable income is \$25,220.30, making the amount under section 117(2)(a) of Canada's *Income Tax Act*, 15% (\$25,220.30 is less than \$45,282) and the amount under BC's *Income Tax Act* Section 4.1, 5.06% (\$25,220.30 is less than \$30,004) – so C is the sum of these amounts, which the appellant correctly calculated as \$20.06%.

Therefore, for the appellant's current circumstances, the calculation set out in schedule B, section 7(1)(e) of the EAPWDR is:

$$(\$373.66 - \$1,102.42) = -\$728.76 \times 20.06\% = -\$146.19$$

The ministry concluded as the calculation produces a negative result, there is no CPP tax exemption available to the appellant.

The panel used the following evidence to review the calculation under section 7(1)(e), schedule B of the EAPWDR:

A - A letter to the appellant from Service Canada (July 14, 2020) confirms his current CPP gross monthly entitlement is \$373.66.

B – Information posted on the CRA website states where net income is less than or equal to \$150,473, the basic personal amount is \$13,229. The appellant's 2019 tax return summary shows taxable income as \$25,220.30.

C – Section 117(1) of the *Income Tax Act* (Government of Canada) shows the tax rate as 15% if the amount taxable is equal to or less than \$45,282. The *Income Tax Act* (Government of British Columbia) states the tax rate is 5.06% of taxable income if the taxable income does not exceed \$30,004.

Therefore:

$$(\$373.66 - (\$13,229/12)) \times 20.06\% =$$

$$(\$373 - \$1,102) \times 20.06\% =$$

$$-\$729 \times 20.06\% = -\$146$$

Although the appellant argues that his income was not \$150,473, the panel notes the information on the CRA website applies to situations where, "net income is less than or equal to \$150,473". It is not intended to reflect actual individual income.

And, although the appellant argues that his personal tax exemption should be \$12,069 (as stated on his 2019 tax summary), the panel notes the basic personal amount of \$13,229 (CRA website), reflects the current basic personal amount for 2020. As the panel determined the ministry reasonably determined that the appellant's opportunity to request reconsideration prior to June 2020 is not available, the current rate is applicable.

Therefore, the panel finds the ministry reasonably applied section 7(1)(e), schedule B of the EAPWDR in calculating a possible CPP tax exemption. And, as the result of the formula is a negative amount, the panel finds the ministry reasonably concluded the appellant is not eligible for a CPP tax exemption.

The panel recognizes the appellant's financial challenges but finds the ministry has reasonably followed the applicable legislation.

Conclusion

In conclusion, the panel finds, the ministry's reconsideration decision, which determined that the appellant was not eligible for reconsideration of the CPP tax exemption, prior to June 2020 as per section 71(2) of the EAPWDR, was a reasonable application of the legislation in the circumstances of the appellant.

As well, the panel finds the ministry's reconsideration decision, which determined that the appellant is not currently eligible for the CPP tax exemption as per schedule B, section 7(1)(e) of the EAPWDR, was a reasonable application of the legislation in the circumstances of the appellant.

The appellant is not successful on appeal.

APPEAL NUMBER
2020-00203

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

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/09/13

PRINT NAME

Sarah Bijl

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/09/13

PRINT NAME

Patrick Cooper

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/09/13