

APPEAL NUMBER  
2020-00212

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 21, 2020, which determined that the monthly CPP payment of \$310.30 must be deducted as per sections 1 and 24 and schedules A and B of the Employment and Assistance for Persons with Disabilities Regulation.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1 and 24, and schedule A, sections 1, 2 and 4 and schedule B, sections 1, 6 and 7

## **PART E – SUMMARY OF FACTS**

### **Relevant Evidence Before the Minister at Reconsideration**

#### **Ministry records show:**

- The appellant is a single recipient of disability assistance and her file opened March 30, 2009.
- The rate of assistance, as a single person, includes \$808.42 support and \$375.00 shelter for a total monthly entitlement of \$1183.42.
- On July 15, 2020 the ministry received information from a shared data match report with Service Canada that the appellant was in receipt of Canada Pension Plan (CPP) survivor's benefits in the amount of \$310.30 per month.
- The data match showed the effective date of eligibility as January 1, 2020. The appellant received \$1,861.80 in June.
- The ministry determined the CPP survivor's benefit consisted of a retroactive payment of \$1551.50 (for the period January to May 2020) and a monthly payment of \$310.30.
- The ministry also determined that the total amount of \$1,861.80 exceeded the appellant's rate of assistance and therefore found her ineligible for August disability assistance.
- On August 21, 2020, after reviewing the request for reconsideration, the ministry determined the appellant should not be denied August disability assistance.
- However, the ministry also determined that the monthly CPP payment of \$310.30 must be deducted.
- The ministry noted that social security payments and the aarp.org website (provided by the appellant) refer to payments provided in the United States and not in Canada.

#### AARP website (May 27, 2020)

"Can I collect my deceased spouse's Social Security and my own at the same time?"

"Not in the sense of getting both combined. When you are eligible for two Social Security benefits – such as a survivor benefit and a retirement payment - Social Security doesn't add them together but rather pays you the higher of the two amounts..."

#### Letter from Service Canada to Appellant (May 29, 2020)

- stating her application for a CPP survivor's pension has been approved, and the total monthly amount is \$310.30 (effective date January 2020)
- retroactive amount - \$1,551.50

List of expenses totalling \$1,882.04 (May 3, 2020)

List of expenses totalling \$2,111.69 (May 31, 2020)

Bank Statement - Account Activity

- balance as of July 31, 2020: \$1,579.59

#### **Reason for Request for Reconsideration (August 7, 2020)**

The appellant states her partner passed away in December 2019. The appellant's partner contributed to her rent, groceries, necessities and utilities. Her partner's death left her alone with the full cost of these expenses plus payment of huge outstanding debt for a mobile phone, TV and internet, so she had to borrow money from friends.

The appellant has been in grief and distress since and the cost of her medication has risen. Given the above, she states it is unfair to cut down on the payment she used to receive. The federal government has determined she is entitled to monthly \$310 CPP for survivor benefits. She understands, based on the current regulation, that she is entitled to the \$310 CPP survivor benefits and the benefits should not be deducted from her disability benefits (reference – AARP website).

### **Additional Information**

#### **Appellant**

##### Notice of Appeal (September 7, 2020)

The appellant states she used to share her living expenses with her common-law partner who passed away several months ago. Given her monthly rent of \$936, she cannot afford her living expenses with her disability benefits amount.

At the hearing, the appellant added that she was her common-law partner's only caregiver. After her partner's passing she has to pay all the living expenses and her standard of living is below the poverty line. Previously her husband was paying for her medication but now she has not been taking the medication – for some time, because she has to pay other expenses, such as rent. The survivor's benefit from the federal government is meant to support her. It is not employment income. She is asking that the \$310 survivor's benefit be excluded.

#### **Ministry**

At the hearing, the ministry stated that according to the legislation, CPP survivor's benefits are considered unearned income. There is no discretion and no exemptions and the amount is deducted dollar for dollar. The ministry confirmed that except for the monthly CPP deduction, August disability benefits were not affected. As well, the retroactive payment was not applied to the previous months and no overpayment penalty was initiated.

The panel determined that the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

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

The issue on appeal is whether the ministry's reconsideration decision, which determined that the monthly CPP payment of \$310.30 must be deducted as per sections 1, 24 and schedules A and B 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 Regulation**

##### **Section 1 - Definitions**

(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.

##### **Schedule A Disability Assistance Rates**

*(section 24 (a) )*

##### **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....

##### **Monthly support allowance**

**2** (0.1) For the purposes of this section:

...

(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...

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 (1) For the purposes of this section:

...

(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:

(i) any income earned by a dependent child attending school on a full-time basis;...

(xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);

(xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;

(xlix) gifts;

...

(iv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

...

- (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.

#### **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:

...

(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.

### **Appellant Argument**

The appellant argues that since her partner passed away in December 2019, given her monthly rent of \$936, she cannot afford her living expenses with her disability amount. Her partner contributed to her rent, grocery cost, necessities and utilities, and the cost of her medication has risen. Her partner's death left her alone with the full cost of these expenses plus payment of huge outstanding debt for a mobile phone, TV and internet, so she had to borrow money from friends. She has been in grief and distress since and states it is unfair to cut down on the payment she used to receive.

The appellant argues further that based on the current regulation she is entitled to the \$310 survivor's benefits and the benefits should not be deducted from her disability benefits.

### **Ministry Argument**

The ministry argues legislation does not allow for discretion when calculating net income. The CPP survivor's benefits is unearned income as defined by the ministry's legislation. There are no exemptions for CPP survivor's benefits because it is not an orphan's benefit or a disabled contributor's child benefit payable under the Canada Pension Plan. Therefore, the appellant's monthly payment of \$310.30 must be deducted from her assistance of \$1183.42.

### **Analysis**

#### Section 1, EAPWDR – definitions

Section 1 defines unearned income as any income that is not earned, and includes "any type or class of Canada Pension Plan benefits". The panel notes the letter from Service Canada (May 29, 2020) states the appellant's application for a CPP survivor's pension has been approved, and the total monthly amount is \$310.30. As well, ministry records show on July 15, 2020 the ministry received information from a shared data match report with Service Canada that the appellant was in receipt of CPP (survivor's benefits) of \$310.30 per month.

#### Section 24, EAPWDR - amount of disability assistance

Section 24 provides a formula that states, the amount of disability assistance for a calendar month, 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, section 1, EAPWDR - maximum amount of disability assistance before deduction of net income

Section 1 defines the maximum amount of assistance as “the sum of...the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the...recipient, plus...the shelter allowance calculated under sections 4 and 5 of this Schedule...”

Schedule A, section 2, EAPWDR - monthly support allowance

Section 2 shows the monthly support allowance for a sole applicant/recipient with no dependent children as \$808.42. Ministry records show the appellant is a single recipient of disability assistance.

Schedule A, section 4, EAPWDR – shelter allowance

Section 4 shows the monthly shelter allowance for one person as \$375.

Therefore, the amount under schedule A is \$808.42, and \$375 under schedule B.  
 $\$808.42 + \$375 = \$1183.42$  (total disability allowance)

Schedule B, section 1, EAPWDR - deduction and exemption rules

The panel notes, under this section, only CPP benefits that apply to orphan’s benefits and a disabled contributor’s child’s benefit, are listed as exemptions.

Schedule B, section 6, EAPWDR – deductions from unearned income

The panel notes the only deductions permitted from unearned income are, “any income tax deducted at source from employment insurance benefits” and “essential operating costs of renting self-contained suites.” CPP survivor’s benefits are not included.

Schedule B, section 7, EAPWDR – exemptions, unearned income

The panel notes, the only CPP benefits listed under this section are those relating to the Canadian *Income Tax Act* and not to CPP survivor’s benefits.

As there are no deductions or exemptions that apply in the appellant’s case, the unearned income is calculated at \$310.30.

Therefore, the panel finds the ministry reasonably determined that the \$310.30 in CPP survivor’s benefits should be deducted from the appellant’s monthly disability benefits.

The panel acknowledges the appellant’s financial difficulties but is bound by the legislation.

**Conclusion**

In conclusion, the panel finds the ministry’s reconsideration decision, which determined that the monthly CPP payment of \$310.30 must be deducted as per sections 1, 24 and schedules A and B 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  
2020-00212

**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)

2020/10/05

PRINT NAME

Barbara Insley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/10/05

PRINT NAME

Robert McDowell

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/10/05