

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated October 12, 2022, in which the ministry found that Canada Pension Plan income (“CPP”) for July 2022, is unearned income that must be included in the net income calculation and deducted from the appellant’s September 2022 Disability assistance (“DA”) under section 24 of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The ministry determined that there was no exemption for the July CPP payment under EAPWDR section 1, or under sections 6, 7, or 8 of EAPWDR Schedule B.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act – EAPWDA – section 11

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – sections 1, 24, and 29, and Schedules A and B

The full text of the legislation is available in the Schedule after the decision.

Part E – Summary of Facts

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

1. Information from the ministry's record of decision indicating the following:

- the appellant is a sole recipient of disability assistance ("DA");
- on August 24, 2022, the appellant contacted the ministry regarding CPP deductions from her DA. The ministry advised that CPP income is deducted dollar for dollar from monthly DA for all recipients of ministry assistance in accordance with the legislation;
- on August 24, 2022, the ministry advised that two CPP payments (received on July 4 and July 27, total \$892.34) are not exempt and must be deducted from September DA;
- on August 25, 2022, the appellant emailed a complaint to the Minister's office about CPP being deducted from her assistance cheque. The appellant stated that she was "told to apply for Early Retirement CPP" and did so without being aware that it would reduce the amount of federal retirement benefits which would be lower than if she had waited until age 65 to apply for CPP;
- on September 2, 2022, the appellant submitted a letter and notice of CPP payments to the ministry office;
- on September 2, 2022, a ministry manager spoke to the appellant regarding her concerns about the deduction of CPP. The appellant stated her argument for why CPP should be exempt from ministry assistance;
- on September 14, 2022, the appellant submitted a *Request for Reconsideration* ("RFR");
- on October 12, 2022, the ministry completed the review of the RFR and determined that the CPP payment received on July 27, 2022 (\$446.17) was for the month of July and is not exempt and must be deducted from September DA in accordance with section 24 of the EAPWDR.

[Panel note: at reconsideration the ministry determined that the CPP payment received on July 4, 2022 is backdated CPP for June 2022 and should not be deducted from September DA under section 11 of EAPWDR Schedule B. The panel therefore finds that the CPP payment received on July 4, 2022 is not at issue in this appeal.]

2. An RFR signed by the appellant on September 14, 2022, with a typed paragraph setting out her argument. The appellant presented further argument in an attached letter to the ministry dated August 30, 2022 and an email to the ministry dated September 14, 2022.

In addition to argument, the letter of August 30, 2022 contains the following information:

- the appellant was approved for the CPP benefit in June 2022 but did not receive her first payment until July 2022 due to a backlog in the processing of CPP claims;
- both the July and August CPP payments were deducted from the appellant's September DA cheque leaving her with \$506.16 to live on;
- the appellant discovered that her DA cheque for October 2022 (to be paid on September 21, 2022) "will be reduced by 2 payments again. Presumably my CPP payments for September and October will be taken off the September 21 cheque."
- the appellant submitted her stub [*monthly report*] to the ministry in August 2022, because in June and in the first part of July, she had not received her first CPP payments.

3. A *Payment information* print-out from the appellant's *My Service Canada Account* that shows CPP benefits paid in July and August 2022:

- 2022-08-29: \$446.17 (CPP), paid by direct deposit;
- 2022-07-27: \$446.17 (CPP), paid by direct deposit;
- 2022-07-04: \$446.17 (CPP), paid by direct deposit.

4. Two emails from the appellant to the Minister for Social Development and Poverty Reduction (c.c. MLA) dated August 24, 2022, in which the appellant states her concerns about the deduction of CPP payments from her DA. In addition to argument for why her DA should not be reduced, the email contains the following information:

- the appellant "was told" she was required to apply for CPP benefits as a client, but later she was given different instructions in which individuals on DA no longer have to apply for CPP benefits before age 65;
- the appellant understood that the change in the guidelines (with regard to age) presumably meant that the CPP benefit would not be taken away from ministry clients, but she found out later that that was not the case;
- when her DA was not reduced for July 2022, she "thought this meant I had done everything correctly." The appellant is very concerned about what has happened.

Additional evidence at the hearing

With the consent of both parties the appeal was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* ("EAA"). Both parties provided written submissions which the panel accepts as argument. In an email to the Tribunal, the ministry said that its submission on appeal will be the reconsideration summary.

In a typed submission attached to her *Notice of Appeal*, and an email to the Tribunal dated November 9, 2022, the appellant clarifies that her CPP application was approved in June to start in July. The appellant states that she did not receive a CPP cheque in June. The appellant says she did not report her CPP to the ministry right after she was approved because CPP staff told her that the earliest she could expect to receive her first CPP payment was July 5, 2022, and potentially later than that.

Admissibility

The panel finds that the submission and email provide additional clarification for when CPP income was received and reported. The panel admits these documents under section 24(2) 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 decision, which found that CPP received on July 27, 2022, must be included in the net income calculation and deducted from the appellant's September DA, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. Specifically, was the ministry reasonable to find that CPP income is unearned income under the EAPWDR and that no exemptions apply to the July 27 CPP payment?

Arguments*Appellant*

In her submissions for the appeal, the appellant raises the following points:

- that her CPP cheque is exempt income "because it comes from work...A pension is by its very nature from employment. Even the amount a person receives is linked directly to their earnings." The appellant argues that the ministry is ignoring these facts in the interpretation of their "guidelines";
- a person on DA "lives on a low fixed income below the poverty line. No one who is poor should ever have any money they receive taken away from them wrongly."
- all the funds "that were taken from me" should be returned in full without delay. The appellant argues that no further CPP payments should be deducted from her DA;
- the language used in the CPP information literature "proves that CPP is exempt income based on the fact that the money is earned from employment." The appellant quotes pension information from the Government of Canada website that explains that monthly CPP is based on average earnings throughout the person's working life and that an employee's contributions to the Canada Pension Plan are based on earnings. The appellant argues that "it is very clear the government views CPP as being from earned income."
- CPP funds should be "debited dollar for dollar from my limit of \$15,000 of allowable earnings each calendar year." The appellant noted in her RFR submissions that the ministry allows recipients of assistance to keep up to \$15,000 earned income from employment. The appellant submits that CPP should be treated as earned income under the legislation because her CPP payments resulted from employment;
- there was confusion over whether the appellant should be reporting sums of money to the ministry given that she is a "physically medically disabled human being." The appellant notes that recipients of DA don't normally submit monthly reports to the ministry;

- by deducting CPP payments from DA, the ministry is “not following its stated mandate to reduce poverty for their clients.” The appellant notes that “the poor, the disabled, and struggling seniors” are especially hard hit by increasing living costs.

Ministry

In the reconsideration decision the ministry argues that the appellant’s CPP benefits are unearned income under section 1 of the EAPWDR. The ministry notes its September 2, 2022 discussion with the appellant in which the manager explained that “CPP is a fixed monthly income that does not require you to work to receive, thus why it is deemed unearned income.”

The ministry argues that because CPP is unearned income, it must be included in the net income calculation and deducted from the assistance rate under EAPWDR section 24 with the exception of any amounts that meet the exemption criteria under EAPWDR Schedule B. The ministry argues that no exemptions apply to the July 27 CPP payment.

The ministry explains the reporting requirements under section 11 of the EAPDWA and section 29 of the EAPWDR which require recipients to notify the ministry of a change in financial circumstances. The ministry argues that July income “was to be reported by August 5th and affected September assistance.” The ministry said that any future CPP payments must be reported to the ministry and will be deducted from DA because they are not exempt.

Regarding the appellant’s concern that she was told to apply for CPP at age 60, the ministry advised that the appellant “can cancel early CPP benefits, though you will need to pay back what you received thus far.”

Legislative requirements and panel’s decision

Under section 1(1)(f) of the EAPWDR, “unearned income” means any income that is not earned income, and includes money received from any type or class of Canada Pension Plan benefits. The panel finds that the ministry was reasonable in treating the appellant’s CPP benefits as unearned income because the legislation clearly states that all types of CPP benefits are unearned income.

The panel acknowledges that a CPP retirement pension is based on the number of years of employment and contributions by the employee to the Canada Pension Plan, but whether a person has worked and paid into the plan does not make CPP payments earned income

under the ministry's legislation. The ministry's legislation is separate from the federal legislation that deals with CPP contributions.

The terms "earned income" and "unearned income" have legal definitions in the EAPWDR. The panel understands that a person could not receive a CPP retirement pension without having worked but notes that the ministry is bound by the legislation. There is no "guideline" that allows the ministry to treat CPP payments as earned income to which the \$15,000 annual earnings exemption would apply.

Neither the ministry nor the panel can change what the legislation says. The ministry states in the reconsideration decision that the "Reconsideration Officer does not have the authority to overturn legislation; the purpose of a reconsideration is to verify that legislation has been applied correctly and consistently."

Under section 24 of the EAA, the panel is authorized to confirm the reconsideration decision if it was a reasonable application of the legislation. Any changes to the legislation would need to be made by the provincial government and are outside the scope of the panel's authority.

The panel finds that the ministry was reasonable to deduct the July 27, 2022 CPP payment from the appellant's September DA in accordance with section 24 of the EAPWDR. First, the appellant was required to report any changes in income that may affect her eligibility for assistance. The appellant was required by the legislation to report any income received in a certain month by the 5th day of the following month. The appellant was also required to report the source of the income.

These requirements are set out in section 11 of the EAPWDA and section 29 of the EAPWDR. Under the legislation, the appellant was not required to report the CPP income she received in July on the day it was direct deposited, but she was required to report it by August 5, 2022. The evidence is that the appellant did report the CPP income to the ministry in August 2022, and she provided a print-out from her *My Service Canada* account confirming that she received \$446.17 on July 27, 2022.

The appellant clarified in her appeal submission that she was approved for CPP in June and this payment was July CPP. Under the ministry's cheque issue schedule, unearned income that was received in July 2022, and reported in August would impact September DA.

Once the appellant's income is reported to the ministry, the ministry is required to perform a calculation under section 24 of the EAPWDR. This calculation is mandatory, the ministry does not have the discretion to not deduct the person's net income (as determined under Schedule B) from their DA rate.

The appellant's net income for July 2022 was \$446.17 from the CPP that was received on July 27. The appellant's DA rate, as set out in Schedule A of the EAPWDR, is \$1358.50 per month. Based on the calculation under section 24 of the EAPWDR, the appellant's DA entitlement for September 2022 was \$912.33. While the appellant finds the deduction unfair and contrary to the ministry's mandate to reduce poverty and says that the ministry made a mistake, the panel finds that the ministry did not make a mistake and applied the legislation in a reasonable way.

The panel finds that the ministry was reasonable to conclude that none of the exemptions under EAPWDR section 1 or Schedule B apply to the appellant's CPP benefit. As the ministry explains, the appellant's CPP is not exempt from the net income calculation because it is not an orphan's benefit or a contributor's child's benefit under section 1 of the EAPWDR. The deductions or exemptions from unearned income that are permitted under sections 6, 7 and 8 of Schedule B also do not apply to the CPP benefit for the following reasons.

Section 6 states that the only deductions permitted from unearned income are for income tax deducted at source from Employment insurance ("EI") benefits, and for the essential operating costs of renting self-contained suites. The evidence is that the appellant's unearned income is the CPP benefit and not EI. There is no evidence to indicate that the appellant rents out suites.

As the ministry explains, the tax exemption under section 7(1)(e) is determined by an automatic calculation based on a data match with Service Canada systems. The ministry's file review confirmed that the tax exemption was considered and is calculated as \$0. Therefore, the tax exemption under section 7 of Schedule B does not apply in the circumstances of the appellant.

The exemption for education-related unearned income under section 8 of Schedule B also does not apply in the appellant's circumstances because her unearned income is the CPP benefit, and not an education benefit.

The panel acknowledges there may have been some miscommunication between the appellant and ministry regarding whether the appellant should apply for CPP benefits, whether she should report the CPP benefits, and whether the CPP benefits would be

deducted from her DA. However, the panel is bound by the legislation and has no option but to apply the legislation in the EAPWDR.

Conclusion

The panel finds that the ministry's decision to deduct CPP income from the appellant's September DA was a reasonable application of the legislation because CPP income is treated as unearned income and must be included in the net income calculation under the EAPWDR. The ministry has no discretion to not deduct the appellant's CPP from her DA rate. Neither the ministry nor the panel has the authority to change the legislation and treat CPP benefits as earned income.

The panel confirms the reconsideration decision. The appellant is not successful in her appeal.

Schedule – Relevant Legislation

EAPWDA

Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
 - (i) is in the form specified by the minister, and
 - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
 - (i) may affect the eligibility of the family unit, and
 - (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

EAPWDR

Part 1 — Interpretation

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.

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);

and

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

(ii) change in income received by the family unit and the source of that income;

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	983.50

Monthly shelter allowance

4 (2)The monthly shelter allowance for a family unit other than a family unit described in section 14.2 (1) of the Act is the greater of

(2)The monthly shelter allowance for a family unit other than a family unit described in section 14.2 (1) of the Act is the greater of

(a)the minimum set out in the following table for the family unit, and

(b)the lesser of

(i)the family unit's actual shelter costs, and

(ii)the maximum set out in the following table for the family unit.

Item	Column 1 Family Unit Size	Column 2 Minimum	Column 3 Maximum
1	1 person	\$75	\$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:

(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*;

Minister's discretion to exempt education related unearned income

8 ... [*panel note: not applicable to the decision under appeal*]

APPEAL NUMBER 2022-0247

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)
Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Margaret Koren

Date (Year/Month/Day)

2022/11/30

Print Name

Connie Simonsen

Signature of Member

Date (Year/Month/Day)

2022/11/30

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2022/11/30