

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated May 12, 2023, that determined the appellant was not eligible for May 2023 disability assistance due to the CPP income received in March 2023 by the appellant.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the Act) – Section 3 and 11.

Employment and Assistance for Persons with Disabilities Regulation (the Regulation) – Section 1, 9, 24 and 29.

Schedule A Section – 1, 2, and 4.

Schedule B – Section 1, 3, 6, 7, 8 and 11.

The full text of the applicable legislation is available in Appendix 1 after the decision.

Part E – Summary of Facts

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

- The appellant is a sole recipient of disability assistance, receiving \$1358.50 per month for disability assistance.
- The appellant now receives \$642.86 per month from Canada Pension Plan (CPP).
- The appellant received \$12,110.77 CPP income in March 2023, which included a monthly CPP amount of \$642.86 and the rest as backdated CPP disability benefits.
- The ministry determined the appellant was ineligible for disability assistance for May 2023 as CPP income must be deducted from disability assistance.

The appellant contacted the ministry requesting more information regarding CPP being deducted from his assistance and was informed that CPP is deducted dollar for dollar and that he will be reassessed for June assistance.

The appellant then went to his local ministry office and spoke with a ministry worker, and then submitted a request for reconsideration. The appellant stated that:

- He thought the CPP income was exempt as there was less than \$15,000 in earnings.
- According to the PWD website, there is a \$15,000 annual exemption if the CPP amount is lower than \$15,000.
- He stated he is unable to pay for rent and has to cover living expenses.
- He did not know that he would not be eligible for May assistance.
- He had invested the CPP lump sum in stocks and does not want to convert the stocks back to cash because he will lose money as the stock value has gone down.
- The CPP exemption information is difficult to find on the ministry website therefore the information was not clearly communicated to him.

Additional evidence at the hearing

With the consent of both parties the appeal was conducted as a written hearing. Both parties provided written submissions which the panel accepts as argument.

In the *Notice of Appeal*, the appellant states to not having been informed when the ministry changed the CPP disability benefit back in October 2021 and that he had been on disability from 2008 onwards.

The appellant also provided a written submission and three late written emails to the tribunal. In the written submission the appellant provides a copy of his 2007 application for income assistance and states that he was approved for PWD in 2008, and that this

evidence shows he has been on PWD since 2008. The appellant states that at time, CPP was exempt from PWD deduction.

After receiving a copy of the ministry written submission the appellant provided three subsequent emails in which he appellant states or asks;

- What is CPP disability exemption rule in 2007, and 2008 for PWD clients? as it is not able to be found on Ministry of Poverty Reduction website, and
- I have called Ministry of Poverty Reduction at 1-866-866-0800, spoke to 5 different agents. They said record retention rules are only 7 years into the past. I asked them to provide archive data on how CPP disability affecting PWD in 2007 and 2008. They all kept me on hold, they said will provide this information to me, but all calls ended hanging up on me. This is very concerning, that the Ministry wanted me to call to find out the rules with CPP disability and PWD, but the phone agents all hanged up on me. This is another piece of evidence that goes to show how non-professional the Ministry deals with this issue.

The ministry provided a written submission that stated the October 5, 2021, CPP policy page was updated to include reference to the CPP Post-Retirement Disability Benefit (PRDB) only and included no change to the Employment and Assistance for Persons with Disabilities Act (the Act) or regulations. PRDB is applicable to people 60 and over who are working and receiving a CPP pension. In the submission the ministry said that its submission on appeal will be the reconsideration summary.

The ministry reviewed the appellant's late submissions and noted the decision under review is about current eligibility it therefore relies on the original decision and previous written submission for the purposes of this appeal.

The ministry also stated in response to the appellant's request for information about the CPP exemption rules in 2007, he is welcome to contact the ministry, and that information about BC laws and the Employment and Assistance for Persons with Disabilities Act (the Act) and Regulations can be found online at www.bclaws.gov.bc.ca. This also includes a link to review changes to the Act or regulations at specific points-in-time. The sections of the EAPWD Regulations that reference CPP income are Schedule B sections 1(1), 7(1)(e) and 10.

Admissibility of new information

Section 22(4) of the Employment and Assistance Act (“EAA”) says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In this case the appellant provided documentary evidence to support his date of application and award of income assistance. He also provided questions on what the legislation contained in 2007-8 and stated that he had attempted to contact the ministry as suggested to seek this information. The ministry provided information on the changes made on their policy web page in October 2021.

The panel admits the new information under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel finds that this information is relevant because it relates directly to the type of income and its eligibility as rejected by the ministry.

Findings of Fact

The panel accessed the website address provided by the ministry and was able to view the Regulations as of January 2008. The panel finds this information therefore was available to the appellant.

The panel finds no evidence that the appellant is receiving CPP Post-Retirement Disability Benefit (PRDB) nor any evidence to suggest applicability to the appellant working and receiving a CPP pension.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that CPP received in March 2023, must be included in the net income calculation and deducted from the appellant's May Disability Assistance payment (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 Act and regulations and that no exemptions apply to the March 27 CPP payment?

Arguments*Appellant*

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

- He claims that CPP was available as a deduction or exemption at the point of his income assistance award in 2008,
- that any changes to the exemption were made in 2021 by the ministry and lastly,
- he was not advised of these changes and cannot always follow the changes by the ministry.

The appellant finds the decision to deduct his CPP payment is not fair, and asks that the Ministry:

- 1, allows him to keep full amount of PWD, without any deductions, despite receiving CPP disability payment., and
- 2, reimburse him for the May 2023 PWD, because it is completely deducted.

In the broadest sense of interpretation of the written submissions the panel accepts that the appellant feels that any legislated right he may have had available to him in 2007-8 cannot be changed in the future, and if it is then he has a right to be informed of the change, perhaps to guide any income planning he conducted.

Ministry

In the reconsideration decision the ministry argues that the appellant's CPP benefits are unearned income and must be included in the net income calculation.

The ministry argues that the CPP payments do not fit any definition of a possible exemption or a deduction to the net income calculation and as such they must be deducted from the appellant's May 2023 DA.

Legislative requirements and panel's decision

Under section 1(1)(f) of the Regulations, “unearned income” means any income that is not earned income, and includes money received from any type or class of Canada Pension Plan benefits. As a result, the panel finds that the ministry was reasonable in treating the appellant’s lump sum and monthly CPP benefits as unearned income.

Section 1(a) of schedule B to the Regulations states that when calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] there are a number of specific items that are exempt and two that refer to CPP payments. These include;

- orphan's benefits under the *Canada Pension Plan Act* (Canada)
- a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*,

To be exempt from the calculation of the appellant’s net income, both the lump sum and the monthly CPP Benefits would need to meet one of those specific exemptions set out in the sub-sections. The panel notes that none of those specific exemptions apply to the appellant’s CPP payments. Therefore, the panel finds that the ministry was reasonable in finding the treating the appellant’s lump sum and monthly CPP benefits do not qualify for an exemption under this section of the legislation.

Moreover, section 1(d) of Schedule B to the Regulation sets out that “all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.”

To be deductible from the calculation of net income, pursuant to section 6 of Schedule B, the lump sum and the monthly CPP payments would need to qualify as “income tax deducted at source from employment insurance benefits” or “essential operating costs of renting self-contained suites.” Accordingly, the panel finds that as neither the lump sum payment nor the monthly CPP benefits meet these definitions the payments are not deductible pursuant to this section of the regulation.

Section 3 of Schedule B to the Regulation refers to the ability of an appellant to earn additional annual qualifying income that may be exempted from the calculation of net income. The legislation provides that a family unit with one adult recipient who has the PWD designation can have a maximum annual exemption of \$15,000 for qualifying income.

The panel notes the appellant stated he thought there was a \$15,000 annual exemption available to the CPP benefits received, which are indeed lower than \$15,000.

This qualifying income is defined in the legislation to include 'earned income,' and the only 'unearned income' available is compensation paid under the Workers Compensation Act for temporary total disability or temporary partial disability.

Accordingly, as the panel finds the CPP payments do not meet this definition, neither the lump sum CPP payment nor the monthly CPP benefit are exempt from inclusion in the calculation of the Appellant's net income.

As a result, the panel finds that the ministry was reasonable in finding the CPP payments are not exempt under the annual exemption.

Section 7(1) of Schedule B to the Regulation sets out specific exemptions for unearned income, including a portion of CPP benefits, as calculated by the formula set out in 7(1)(e). The ministry policy manual explains that this potential amount is calculated automatically monthly. The ministry states in the reconsideration decision that the CPP monthly payment does not include a taxable portion.

The panel notes no evidence provided by the appellant to suggest a taxable portion of the CPP lump sum payment. Without information to calculate the CPP benefit the panel anticipates that any portion of the CPP payments that would have been exempt under the formula is substantially less than the amount of the \$12,110.77 CPP disability benefits.

With respect to the Monthly CPP Benefits of \$642.86 set out in "A" of the formula is less than the amount set out in item "B" of the same formula, which is the amount of the annual personal exemption as adjusted. In the result, applying the formula set out in section 7(1)(e) of Schedule B to the Monthly CPP Benefits appears to always result in a negative exemption amount and, therefore, the panel finds that the Appellant is not entitled to any exemption in respect of the Monthly CPP Benefits.

The panel finds that, even including an exemption for a portion of the CPP Payment of several thousand dollars, the appellant's net income for March 2023 would exceed the \$1358.50 monthly disability assistance for which the Appellant was eligible in that month.

As a result, the panel finds that the ministry was reasonable in finding that the full amount of the CPP payments must be used in the calculation of net income.

Section 8 of schedule B of the Regulation exempts certain day care and education related unearned income from inclusion in the calculation of net income, none of which include either lump sum or monthly CPP payments. As such, neither the lump sum CPP payment nor the monthly CPP benefits received by the appellant are exempt from inclusion in the calculation of his net income.

Section 9 of schedule B states the deductions and exemptions apply only in the calendar month in which the income is actually received, despite the date it was reported or the period for which it was payable. The panel notes the ministry argument that the full amount of CPP payments of \$12,110.77 is income for March and affects May assistance.

Additionally, Section 11 of schedule B of the regulation requires the amount of the backdated pension benefit that becomes payable must be treated as unearned income and is considered to have been received by the recipient in the month of receipt.

As the panel has found there are no deductions or exemptions available, the panel finds the full amount of \$12,110.77 constitutes the net income.

Section 24 of the regulations states that disability assistance may be provided, 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.

Therefore, if a family unit's net income as determined in Schedule B equals or exceeds the assistance rate determined by Schedule A, they are not eligible for disability assistance.

The amount determined under schedule A has been provided as \$1358.50 and the net income calculated under schedule B is the full amount of the CPP payments of \$12,110.77. As the net income exceeds the maximum amount of disability assistance, the panel finds the appellant is not eligible for disability assistance for the month of May.

The panel has found the CPP benefits are unearned income and are not exempt or deductible in the calculation of net income in the circumstances of the appellant. The ministry was therefore reasonable in finding the net income exceeded the monthly disability benefit and the appellant is not eligible to receive disability assistance for the month of May 2023.

The panel notes the appellant has argued that the CPP deduction criteria was changed sometime after his PWD status of 2008 and that he feels this is unfair. The ministry has

argued that the CPP policy page was updated to include reference to the CPP Post-Retirement Disability Benefit (PRDB) only and included no change to the Employment and Assistance for Persons with Disabilities Act or regulations.

The panel recognizes that the role of the ministry is to implement the legislation and has no powers to alter either the act or the regulation. While the ministry may have some discretion in the interpretation of certain sections, such as the applicability of the educational exemption, there is no ability for the ministry to exercise discretion on the remaining possible deductions or exemptions.

Further, the panel notes that legislation is often changed and modified. This is a function of the legislature and not the ministry. There is no evidence to support the contention that a previous exemption existed for CPP benefits or that the appellant would in some way be entitled to such previous exemption.

Conclusion

Based on all the available evidence the panel finds that the Ministry's reconsideration decision, which determined that the appellant was ineligible for assistance in the month of May 2023 due to having received the lump sum and monthly CPP payment was reasonably supported by the evidence.

As a result, the panel confirms the Ministry's reconsideration decision, and the Appellant is not successful in the appeal.

Appendix 1

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

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 confirmed by a signed statement of each recipient.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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;

Limits on income

9 (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.

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);
- (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 191 [*temporary total disability*] or 192 [*temporary partial disability*] 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 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the *Workers Compensation Act* received by the family unit in the calendar month.

Schedule A

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 8 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 (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
- (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 (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	\$983.50

Monthly shelter allowance

4 (1) For the purposes of this section:

(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:

(iv) 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 (1) In this section:

"base amount" means

(a) \$1 250, in the case of a family unit that includes only one recipient,

"qualifying income" means

- (a) earned income, except the deductions permitted under section 2, and
- (b) unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the *Workers Compensation Act*;

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 Veterans Affairs Canada 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.

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.

APPEAL NUMBER 2023-0140

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 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

Donald Stedeford

Signature of Chair

Date (Year/Month/Day)

2023/06/14

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

2023/06/14

Print Name

Dawn Wattie

Signature of Member

Date (Year/Month/Day)

2023/06/15