

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated May 23, 2023, which resulted in Service Canada repaying the Ministry \$23,543.74 on the Appellant’s behalf. The Ministry stated that under the legislation, when there is an arrears Canada Pension Plan payment the Ministry is entitled to recoup the amount of Disability Assistance that a recipient received but would not have been eligible for had the recipient been receiving Canada Pension Plan payments at the time the Disability Assistance was paid.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act, section 22(4)

Employment and Assistance for Persons with Disabilities Regulation – sections 1, 8, and 24

Employment and Assistance for Persons with Disabilities Regulation, Schedule B - sections 1, 6, and 7(1)

The relevant legislation is provided in the Appendix below

PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of Disability Assistance.

According to the Ministry's Reconsideration Decision:

- On March 15, 2022, the Ministry mailed a letter to the Appellant advising him of his possible eligibility for a Canada Pension Plan disability benefit (the CPP Benefit);
- On March 24, 2022, the Appellant signed the Consent Form, which the Ministry received on April 11, 2022, and forwarded to Service Canada;
- On May 27, 2023 (*note: this should read "May 22, 2022"*), having reviewed the Appellant's CPP Statement of Contributions, the Ministry noted that the Appellant met the financial criteria to apply for the CPP Benefit, and mailed the Appellant a CPP Benefit application form;
- On October 31, 2023 (*note: this should read "October 31, 2022"*), the Ministry received a letter from Service Canada, dated October 26, 2022, which confirmed that the Appellant had been approved for the CPP Benefit, effective January 2020, and that \$23,543.74 would be reimbursed to the Ministry for the period from January, 2020 to October, 2022; and,
- On November 15, 2022, the Ministry received a payment of \$23,543.74 from Service Canada.

Additional evidence before the Ministry when the Reconsideration Decision was made relating to this appeal included:

- The Appellant's Reconsideration Request, dated May 10, 2023, in which the Appellant says he was asking for reconsideration because:
 - Unearned income does not apply to "*CPPD reimbursement and monthly benefits*"; and,
 - According to the Provincial *Pension Benefits Standards Act*, a disability benefit is an ancillary benefit, and ancillary benefits are not "*eligible for CPP deductions*"; and,
- A two-page Service Canada Consent Form (the Consent Form), signed by the Appellant on March 24, 2022.

Additional Information Submitted after Reconsideration

In the Notice of Appeal, dated May 27, 2023, the Appellant restated the reasons he had given in his Reconsideration Request, adding that he had been waiting almost three years

for his CPP Benefit to be approved, and had had to go deeply into debt to cover his living and other expenses while waiting which caused him "*psychological issues*".

The Appellant also provided an additional submission which was received by the Employment and Assistance Appeal Tribunal on June 7, 2023 (the Appellant Submission).

New Evidence

Section 22(4) of the Employment and Assistance Act says that a panel can consider evidence that is not part of the record when the Ministry made its decision. But first the panel must consider if the new information is relevant to the decision. If a panel determines that any new evidence can be admitted, it must decide if the decision was reasonable considering the new information.

The Appellant Submission did not include any evidence that was not part of the information the Ministry had at reconsideration, or that was not included in the Notice of Appeal.

The Ministry did not make a submission.

New evidence contained in the Notice of Appeal is the length of time the Appellant had waited for his CPP Benefit to be approved, that he had had to go into debt while waiting for the CPP Benefit to be approved, and that he has suffered from psychological issues as a result of the Ministry's decision.

The Panel notes that nothing in the legislation limits or changes the amount of any CPP Benefits in arrears based on the length of the period of arrears, or based on the amount of debt of a Disability Assistance recipient. Therefore, the Panel finds that this new information doesn't impact the decision, and, as a result, the Panel does not admit the new evidence in the Notice of Appeal.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Reconsideration Decision, which resulted in Service Canada repaying the Ministry \$23,543.74 on the Appellant's behalf, was a reasonable interpretation of the legislation in the Appellant's circumstances. In other words, was it reasonable for the Ministry to offset the full amount of the Appellant's CPP Benefit arrears payment from the Disability Assistance received by the Appellant from January 2020 to October 2022?

Position of the Parties

The Appellant's position is that the Ministry does not have the authority to use his CPP Benefit arrears amount as an offset against the total amount of Disability Assistance he has received since he started getting Disability Assistance because:

- The CPP Benefit is not considered unearned income under Section 1 of the Regulation;
- A CPP disability benefit is considered an ancillary benefit under the *Pension Benefits Standards Act*, and as such, is not eligible for a CPP deduction; and
- The CPP Benefit was designated for him and the Ministry was only a facilitator to make sure he received his CPP Benefit properly.

The Ministry's position is that:

- Disability Assistance recipients who may be eligible for other income or means of support, including a CPP benefit, are required to pursue and accept the other income or means of support; and,
- By signing the Consent Form, the Appellant was directing Service Canada to make a payment to the Ministry for the amount of assistance he received since the day he became eligible for CPP Benefit.

Panel Decision**As to Whether the *Pension Benefits Standards Act* Applies**

The Appellant has argued that the *Pension Benefits Standards Act* says that a disability benefit is an ancillary benefit. The Appellant also argues that ancillary benefits are not "eligible for CPP deductions". The Panel notes that the *Pension Benefits Standards Act* does not apply in this case. The *Pension Benefits Standards Act* applies to British Columbia employment pension plans, and is designed to protect the interests of British Columbia

pension plan members by setting minimum standards for British Columbia pension plans. The Panel notes that the Canada Pension Plan is not a British Columbia pension plan.

As to Whether the CPP Benefit is Considered Unearned Income

Section 1(1) of the Regulation defines "*unearned income*" to include "*any class or type of Canada Pension Plan benefits*". Therefore, the Appellant's CPP Benefit is specifically identified as a type of unearned income. In addition, sections 6 and 7 of the Regulation list the types of unearned income that are deducted or exempt from net income. The Panel notes that no classes or types of Canada Pension Plan benefits are listed in section 6 or section 7. As the CPP Benefit is a type of Canada Pension Plan benefit that is not deducted or excluded from net income, the Panel finds that the Ministry reasonably determined that the CPP Benefit is a type of unearned income that must be deducted from the amount of Disability Assistance that the Appellant would otherwise have been entitled to under section 24 of the Regulation.

As to Whether the Appellant is Entitled to any of the CPP Benefit Arrears Payment

Section 24 of the Regulation says that a Disability Assistance payment for any calendar month cannot exceed the amount calculated under Schedule A of the regulation. According to the Consent Form, the Appellant received social assistance of \$537.99 for part of October 2020, and \$1,358.50 from November 2020 until the end of the month in which Service Canada provided the Ministry with the arrears payment (i.e., October 2022). Therefore, according to the information available, the Appellant received a total of \$41,292.99 ($\$537.99 + \$1,358.50 \times 30$ months) in Disability Assistance prior to the end of the arrears period.

The evidence indicates the total CPP Benefit to which the Appellant was entitled in the arrears period was \$23,543.74, and that this was the amount received by the Ministry on November 15, 2022.

Section 8 of the Regulation says any amount up to the amount of Disability Assistance provided to a recipient from the date that the recipient becomes eligible for the Canada Pension Plan benefit be deducted from the amount of that benefit and paid to the Ministry.

As the total amount of the Disability Assistance paid to the Appellant over the arrears period (\$42,102.99) exceeds the amount that the Ministry received with the CPP Benefit arrears payment (\$23,543.74), the Panel finds that the Ministry reasonably determined that the Appellant is not entitled to any portion of the \$23,543.74 the Ministry received from Service Canada.

Conclusion

Having considered all the evidence, the Panel finds the Ministry's Reconsideration Decision, which found that the Appellant was not entitled to any portion of the \$23,543.74 in CPP Benefits the Ministry received on the Appellant's behalf, was a reasonable application of the applicable enactment in the circumstances of the Appellant. Accordingly, the Panel confirms the Ministry's decision and the Appellant is not successful in his appeal.

* * * *

The Panel sympathizes with the Appellant's long wait for approval of the CPP Benefit in arrears and the complicated system of payment/offset between disability assistance and federal CPP benefits. However, there are no provisions in the legislation that would allow the Ministry to vary the requirements set out in the legislation.

APPENDIX - LEGISLATION

EMPLOYMENT AND ASSISTANCE ACT

Panels of the tribunal to conduct appeals

22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

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 ...

Requirement to apply for CPP benefits

8 If a family unit includes a recipient who may be eligible for a benefit under the *Canada Pension Plan* (Canada), for the family unit to continue to be eligible for disability assistance, the recipient, when requested by the minister, must complete a Consent to Deduction and Payment under the *Canada Pension Plan* (Canada) directing that

(a) an amount up to the amount of disability assistance provided to or for the family unit from the date that the recipient becomes eligible for the Canada Pension Plan benefit be deducted from the amount of that benefit, and

(b) the amount deducted be paid to the minister.

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) ... 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 ...

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 ...

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

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:

(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; ...

(g) a benefit paid under section 22, 23 or 23.2 of the *Employment Insurance Act* (Canada) to any person in the family unit.

APPEAL NUMBER 2023-0150

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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2023/06/26

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2023/06/26

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2023/06/26