

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated May 17, 2023, in which the Ministry determined that the Appellant’s income from his Canada Pension Plan disability benefit (the CPP Benefit) must be deducted from his monthly Disability Assistance amount.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation – sections 1, 24; Schedule A, sections 1(1), 2(1), and 4(2); and 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:

- The Appellant receives \$1410.50 per month for Disability Assistance, which comprises \$983.50 for a support allowance, \$375 for a shelter allowance and \$52 for a transportation supplement;
- On October 31, 2022 the Ministry received a letter from Service Canada, dated October 26, 2022, indicating that the Appellant was approved for a CPP Benefit at a rate of \$708.01 per month, effective November 2022;
- On November 3, 2022 and again on December 21, 2022, the Appellant spoke to the ministry by phone, and was told on both occasions that his CPP Benefit would be deducted from his monthly Disability Assistance amount; and,
- On January 1, 2023, the Appellant's CPP Benefit increased to \$754.03 per month.

Additional evidence before the Ministry when the reconsideration decision was made 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*";
 - No deduction should be made for any month after any initial deduction is made for CPP Benefits paid in arrears; 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*".
- A one-page bank statement in the Appellant's name, showing seven monthly deposits from the Province of BC varying between \$656.47 and \$1,445.50 and deposited to his bank account between October 1, 2022 and April 29, 2023.

Additional Information

In the Notice of Appeal, dated May 27, 2023, the Appellant restated the reasons he had asked for reconsideration, said he had been waiting almost three years for his CPP Benefit, and that he had had to go deeply into debt to cover his living and other expenses while waiting for his CPP Benefit to be approved.

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 how monthly CPP Benefits are treated based on the length of the period of an arrears CPP payment, 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 determined that the Appellant's income from his CPP Benefit must be deducted from his monthly Disability Assistance amount. In other words, was it reasonable for the Ministry to deduct Appellant's monthly CPP Benefit of \$708.01 per month in November and December 2022 and \$754.03 per month since January 2023 from the Disability Assistance amount of \$1,358.50 to which he was otherwise entitled?

Position of the Parties

The Appellant's position is that the Ministry does not have the authority to use his monthly CPP Benefit as an offset against the monthly amount of Disability Assistance to which he would otherwise be entitled because:

- The CPP Benefit is not considered unearned income under Section 1 of the Regulation;
- No deduction should be made for any month after any initial deduction is made for CPP Benefits paid in arrears;
- 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 a recipient's income includes a CPP Benefit, which is classified as unearned income, and the legislation does not allow discretion when calculating the Appellant's net income.

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 CPP deductions are not an issue in the appeal. CPP deductions are made from an employee's employment income or a self-employed individual's employment income and applied as a contribution to the Canada Pension Plan while an individual is working. In any event, the Panel also 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 Employment and Assistance for Persons with Disabilities Regulation (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, the Panel finds that the Ministry reasonably determined that the CPP Benefit is a type of unearned income that is included in the Appellant's net income.

As to Whether the CPP Benefit must be Deducted from the Appellant's Monthly Disability Assistance Amount

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 minus the monthly net income. Schedule A says that a sole recipient with no dependent children is entitled to receive up to \$1,358.50 in Disability Assistance per calendar month. As the Appellant is a sole recipient with no dependent children, he is entitled to receive a maximum Disability Assistance up to this amount.

Schedule B of the Regulation says that all unearned income, except for specifically identified kinds of unearned income which are exempt or for which a deduction is permitted, must be included in a person's net income and deducted from the Disability Allowance amount. In this case, the CPP Benefit is unearned income as defined in Section 1(1) of the Regulation, and is not a type of unearned income listed in the deductions or exemptions provided in Schedule B Sections 6 and 7 respectively.

Accordingly, the Appellant is entitled to \$650.49 per month for the months of November and December 2022, representing a combination of his support and shelter allowances less his CPP Benefit (\$1,358.50 - \$708.01), and \$604.47 per month from January 1, 2023 to the present (\$1,358.50 - \$754.03). In addition, the Appellant is entitled to any additional amounts for any eligible supplements such as a transportation allowance, nutritional supplements, etc.

Conclusion

Having considered all the evidence, the Panel finds the Ministry's Reconsideration Decision, which determined that the Appellant's income from the CPP Benefit must be deducted from his monthly Disability Assistance, was a reasonable application of the applicable enactment in the circumstances of the Appellant. Accordingly, the Panel confirms the Ministry's decision. Consequently, 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 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 ...

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 ...

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 (2) The monthly shelter allowance ... 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; ...
 - (xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program ...
 - (lxvii) money that is paid or is payable to or for a person from a settlement under an agreement to settle claims relating to the transfer of the Seabird

Island Indian Reserve in 1959 by the Government of Canada to the Seabird Island Band and the distribution of shared trust funds on a per capita basis, ...

(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.

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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