



### **PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the ministry's decision at reconsideration dated January 4, 2010. The decision denied the appellant's request for Persons With Disabilities (PWD) assistance for January 2010 because his CPP income exceeded the amount allowed for PWD assistance under the legislation. In November 2009 the appellant had received a CPP Disability payment which included back dated CPP Disability monies. The ministry found that as a PWD recipient the appellant was eligible for \$500 monthly exemption on earned income. However, any type or class of CPP income is defined under the legislation as "unearned income" and therefore does not qualify for the earned income exemption. The CPP Disability funds received in November being greater than the appellant's monthly assistance the appellant was therefore ineligible for January PWD assistance.

### **PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

*Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) Section 1, 9, 24 and Schedules A and B.*

## **PART E – SUMMARY OF FACTS**

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The evidence before the ministry at reconsideration included:

- "Promise to Repay" documents (2) signed by the appellant on December 16, 2009 covering monies provided by the Ministry of Housing and Social Development awaiting final outcome of the reconsideration and appeal;
- Letter with attachments from the Ministry of Human Resources Development Canada to the appellant dated October 16, 2009 providing the appellant with information regarding his Canada Pension Plan (CPP) Disability benefit;
- Request for Reconsideration document signed by the ministry on December 15, 2009;
- Letter from the appellant dated December 16, 2009.

Effective June 2009 the appellant has been a single Persons with Disabilities (PWD) recipient with no dependents. In October 2009 Canada Pension Plan (CPP) Disability income was approved for the appellant. In November 2009 the appellant received CPP Disability income for November of \$914.79 together with a backdated amount of \$10,040.38. Of the backdated amount \$7,845.79 was assigned to the Ministry as per the agreement on the Consent to Deduct ISP1613. The balance, \$2,194.59 was issued to the appellant on November 13, 2009.

As the CPP Disability income was unearned income the full amount of the CPP Disability income issued to the appellant for November was deducted from his January 2010 assistance making him ineligible for January assistance. The appellant was advised of this on December 15, 2009 and requested a reconsideration of the decision.

The appellant's letter of December 16, 2009 states that the facts pertaining to his receipt of back payments had not been explained to him. His understanding, he wrote, was that he was permitted to earn a sum of \$500.00 per month. He sought a meeting to decide how he could best pay back the amount of \$2,194.59 and offered his apologies as his intent had never been to cheat.

When he sought to appeal the ministry's decision at reconsideration the appellant wrote in the Notice of Appeal that he should not be penalized for information that had not been given to him.

At the hearing the ministry confirmed that the appellant is eligible for a \$500 monthly exemption on earned income. The ministry explained in detail the legislation that defines CPP income as unearned income, the result this had on the appellant's position when he received the CPP disability income in November 2009 and the effect this had on his January 2010 disability assistance. She explained that the ministry had no discretion in how it dealt with the CPP disability income in relation to the appellant's disability assistance. The Ministry pointed to the letter from Human Resources Development Canada to the appellant on October 16, 2009 with its explanation. She acknowledged that recipients of benefits can be sometimes overwhelmed by the volume of documents they received. Finally she assured the appellant that he did not have to repay the \$2,194.59. She explained that what he might need to repay, depending on the outcome of the appeal was the \$1,066.42 for which he had signed the Promise to Repay documents on December 16, 2009. This

was a "Benefit while Awaiting Reconsideration/Appeal Decision." Should the ministry's decision at reconsideration be confirmed at appeal, the appellant would repay the full amount of \$1,066.42. Should the appeal reverse part of the ministry's decision the appellant would pay back to the ministry the total amount less the amount of any adjustment in his favour. The ministry said that it would be possible for the appellant to work out a payment schedule with the ministry which could mean monthly payments of approximately \$20.00.

The appellant expressed gratitude for the explanation and indicated that he was content with his situation as he now understood it. He reiterated that he had at no time sought to take funds to which he was not entitled.

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

(State the reasons for the panel decision)

The issue under appeal is whether the ministry's decision at reconsideration that denied the appellant's request for Persons With Disabilities (PWD) assistance for January 2010 because his CPP income exceeded the amount allowed for PWD assistance under the legislation was reasonably supported by the evidence.

The relevant legislation is to be found in the *Employment and Assistance for Persons with Disability Regulations (EAPWDR)*, particularly:

- Sections 1 – Interpretation, 9 (2), 24,
- Schedule A Disability Assistance Rates (section 24(a) 1, 2, 4
- Schedule B – Net Income Calculation (section 24 (b) 1, 3 – Exemption – earned income, 6 – deductions from unearned income, 7 – Exemptions – unearned income, and 11.

Section 1 of the *EAPWDR* defines any type or class of CPP benefits are unearned income. Regarding earned income it sets out that in a situation where, as is the case of the appellant, – a family unit is composed of one recipient who is designated as a person with disabilities there is an exemption of earned income of \$500. Regarding limits on income it states at 9(2) that "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 the family unit".

There was no dispute between the parties at appeal as to the amount the appellant received as CPP Disability payment in November 2009, nor that this payment covered amounts due for November 2009 as well as back payments going back to December 2008.

The panel finds that the legislation grants the ministry no discretion regarding how it deals with CPP Disability payments in relation to Disability assistance to persons such as the appellant.

Accordingly the panel finds that the ministry decision at reconsideration that as the appellant's November CPP income was greater than his monthly assistance he was ineligible for January assistance was reasonably supported by the evidence. The panel therefore confirms the ministry's decision at reconsideration.

**ATTACH EXTRA PAGES IF NECESSARY**