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Canada Disability Benefit Regulation Development Feedback

Submitted by YWCA Toronto

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Submitted to Consultation, Canada Disability Benefit Regulations

Employment and Social Development Canada

Submitted via email to CDB@hrsdc-rhdcc.gc.ca

Regarding the eligibility criteria for the Canada Disability Benefit:

The definition of disability used for eligibility should be grounded in the lived experience of disability, focused on function rather than diagnosis, and inclusive, to allow access to the program for all who need it. The *Canada Disability Benefit Act* references the *Accessible Canada Act (ACA)* which states, “disability means any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment — or a functional limitation — whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person’s full and equal participation in society.” This definition is a strong starting point to determine eligibility because it acknowledges specifically that disabilities can be episodic and/or invisible in nature and it acknowledges that societal barriers cause and exacerbate disabilities.

We recommend that this same definition also be used for the eligibility criteria. Ideally, the federal government should work towards a definition of disability for the Canada Disability Benefit (CDB) that is also based on an understanding of lived reality and functional impairment, rather than the medical model of disability reflected in current federal programs. For example, the two major current federal disability support programs, Canada Pension Plan - Disability (CPPD) and the Disability Tax Credit (DTC), rely on far more restrictive and medicalized definitions of disability that disqualify a large swath of disabled Canadians. CPPD requires an applicant’s disability to be “severe” and “prolonged,” and prevents an individual from regularly pursuing any substantially gainful occupation. The DTC requires an individual to have a marked (i.e. severe) restriction in at least one specific bodily function or activity of daily living (or an equivalent restriction through cumulative effects in multiple areas of function) at least 90% of the time. These definitions are based in medical diagnostic categories, rather than the social model of disability that accounts for societal barriers and an understanding of accessibility as collective responsibility.

Indeed, in March 2019, HUMA recommended that CPPD “shift the emphasis from the medical model concepts of ‘severe’ and ‘prolonged’ towards the social model concept of being able to work productively and gainfully on a regular basis,” in part to account for income support required by people with episodic disabilities during periods when they cannot work. Either of these definitions (CPPD and DTC), if applied to the CDB, would result in the exclusion of many individuals living with disabilities who are in need of this benefit, and will not achieve the legislative objective of the Act to reduce poverty and support the financial security of working-age people with disabilities.

Due to discrimination and ableism, some people with disabilities who are able and willing to work are unable to secure and maintain employment. Further, an employer may hire an individual and fail to accommodate them, which may mean that the individual is unable to work. In this case, we recommend rapid reinstatement for those who lose their jobs as a result of a lack of accommodation as well as for those with episodic disabilities. Additionally, we recommend avoiding a focus on Activities of Daily Living (ADL) as they are too restrictive of an assessment tool.

Regarding the benefit amount and the calculation of the benefit:

While the Market Basket Measure (MBM) is used as Canada’s Official Poverty Line, as defined in Section 2 of the *Poverty Reduction Act*, this measure does not account for the additional cost of living with a disability, such as medications not covered under another formulary, special dietary restrictions/needs, the purchase and/or maintenance of medical or technical aids/devices, home modifications, dietary supplements, and mental/physical therapies not covered by public provincial/territorial healthcare, etc. Following the example of the Office of the Parliamentary Budget Officer (OPBO), where the largest gap between welfare income and the MBM was utilized as the base amount in their model, we strongly recommend that the amount of the benefit should supplement existing federal, provincial and territorial programs to ensure that the total income of persons with disability is at least 30 per cent above the local MBM to account for the additional cost of living with a disability.

Adequate benefit amounts can help individuals with disabilities meet their basic needs, including accessing nutritious food, safe, adequate, and accessible shelter, transportation, clothing, and required medications and care. To secure individual autonomy, self-determination, and full economic, political and social inclusion, the minimum guarantee must be adequate to account for the extra cost associated with



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living with a disability, as this is the only way to reduce poverty among people with disabilities, as is the stated objective of the legislation.

However, the MBM is regional, and there are therefore over 50 different MBM thresholds across the country, which raises the issue of potential inequities across provinces and territories. We strongly urge that equity is considered in the determination of the benefit amount - whether that involves a top-up for those who live in rural areas - as already exists among some income programs.

The government has previously signaled that the Canada Disability Benefit (CDB) will be modeled on the Guaranteed Income Supplement (GIS). However, setting the income exemption at the same level as GIS (\$5,000 annually) would be too low for the CDB. People with disabilities should be allowed to earn whatever income they can in support of the realization of their right to work and employment as stated in Article 27 of the UN Conventions of Rights of Persons with Disabilities (UNCRPD), as well as the right to an adequate standard of living and social protection, as stated in Article 28 of the UNCRPD.

We recommend that the government adopt the province of British Columbia's income exemption of \$15,000 used for its disability income supports. This should be followed by a gradual phase-out ideally set at 15% for households with one adult with a disability, based on the Canada Workers Benefit (CWB) disability supplement. The CDB should also be indexed to inflation, and adjusted on a quarterly basis similar to senior benefits, like the GIS and Old Age Security (OAS).

Regarding the calculation of income, we recommend that it is calculated based on the individual, not based on the household, as this reduces what has the potential to be coercive dependence on others (e.g. partners, parents). Using a Gender Based Analysis Plus (GBA+) lens, we know that more women live with disabilities than men, yet women are more likely to experience "financial abuse," such as being prevented from having ownership or control over household financial resources, which can keep them trapped in physically and/or mentally and emotionally abusive relationships and environments.

By calculating income based on the individual, CDB would allow for a more responsive and reliable income supplement for people with disabilities and it means the benefit stays with the individual to whom it should be paid. We also strongly urge that there be no asset testing and to exclude gifts and inheritance from consideration as income.

Regarding the application of the benefit:

In order to ease access, individuals receiving provincial, territorial and federal disability benefits like the Canada Pension Plan - Disability (CPPD), provided that they are financially eligible, should automatically qualify for the Canada Disability Benefit (CDB). This approach has been applied in Ontario where individuals who have qualified for CPPD are automatically deemed eligible for the ODSP (provided they are financially eligible). In addition, there must be an accessible direct application that uses the definition of disability outlined above.

Provincial and territorial social assistance disability support programs are accessed through robust and rigorous application processes that require extensive time, energy, commitment, and money from persons living with disabilities, health care providers and other supports. While there are still barriers to access, these programs are targeted to persons with disabilities living in the deepest poverty.

It must also be recognized that many low-income Canadians living with disabilities do not currently receive these benefits due to factors such as extremely low-income cut-offs and lack of access to health care and social supports. In particular, historically disadvantaged groups, such as Indigenous Peoples, who are underrepresented on Ontario Disability Support Program (ODSP), face additional barriers to accessing it, including lack of access to health practitioners to complete the requisite forms and a lack of culturally specific administration and delivery.

As for the differential access to health providers, the government must consider offering specific assessment clinics for those without a health provider, accommodations for those living in rural or remote communities, or target assessment supports to socially marginalized groups to enhance equity. Further, the government should compensate health providers directly to ensure that fees to applicants do not pose a barrier. Additionally, adding nurses to the list of qualified providers that can complete the application, as is done in the cases of ODSP in Ontario, could also help reduce barriers in completing necessary medical reports to qualify for disability income supports.

For individuals with disabilities not already receiving federal or provincial/territorial social assistance disability support, not only do we recommend an accessible direct application that uses the definition of disability we outline above, but this should be

available in multiple formats, such as online, phone and paper mediums. Such a process should again be determined in collaboration with those with a diversity of lived experiences of disability and their allies.

Regarding the payment frequency:

The Canada Disability Benefit (CDB) should be paid monthly and be portable between provinces and territories.

Regarding retroactive payments:

The 11 month retroactive period for Old Age Security (OAS) and Guaranteed Income Supplement (GIS) is too restrictive and has been challenged in courts in Canada. We recommend a longer time period be adopted because unlike age-based benefits, disability benefits require more rigorous medical and other documentation. It is important that the benefit be paid according to the date on which someone began to qualify for the benefit, not when the application was received, as there can be a significant time lag between the two.

Regarding the correction of administrative errors:

Individuals who will qualify for the Canada Disability Benefit (CDB) will be individuals with disabilities living in poverty and facing significant financial challenges. The CDB should be grounded in the principles of dignity, inclusion, and respect. Generally, the client's well-being should be the central consideration when any administrative errors are being corrected. It is critical that government error not result in punitive actions that would push an individual with a disability deeper into poverty. Clients should be made aware of any administrative errors immediately using clear and concise wording to describe the error(s), and steps that have been/will be taken to correct the error(s).

Regarding the recovery of overpayments:

We recommend that the Canada Disability Benefit (CDB) be grounded in the principles of dignity, inclusion, and respect. Overpayments should rule in the favour of clients, barring exceptional circumstances. It is important that policies regarding overpayments

consider the lived experience of people with disabilities in poverty, who are living on extremely limited incomes and resources, who may have dependents, and may not be able to afford their rent and food if their benefits are scaled back to correct for a past overpayment as a result of government error. The length of time needed to repay any overpayments should be mutually agreed upon, with the client's well-being a central consideration.

There should be a clear process for CDB recipients to notify the government should they notice an overpayment, but there also should not be a punishment if overpayments are not reported in a timely manner, as they can easily go unnoticed. Given that eligible recipients of the CDB are likely struggling to make ends meet due to the increased costs associated with living with disabilities, we urge that the government consider leniency and compassion on the matter of overpayments and limit the amounts that can be recovered. Consideration should also be given to the amount of effort/resources required to recover an overpayment versus the actual amount of the overpayment. For instance, don't spend \$1,000 to save \$100.

Regarding representatives of applicants of beneficiaries:

As a first principle, the benefit should be accessible and barrier-free. However, a concerning trend is the proliferation of for-profit companies completing Disability Tax Credit (DTC) applications for a fee. It is important that application navigation supports be put in place to assist people in accessing the benefits to which they are entitled, but this should not happen through for-profit entities. To prevent this, it is therefore critical that benefit navigation and application supports are built into the Canada Disability Benefit (CDB) to ensure that individuals can apply for it themselves, or have a representative do so. For example, the Government of Canada has contracted Blue Cross to provide administrative supports for individuals applying for veterans benefits. A hot line provides free application support, and because it is arms-length, it may be less intimidating than calling an agency like the Canada Revenue Agency (CRA). The application support must be confidential, and people must have no fear of reprisal for disclosing specific details of their situation to understand their eligibility.

Regarding dealing with death of an applicant of beneficiary:

There are existing processes in place across income support programs in Canada regarding the death of applicants or beneficiaries that can be looked to for guidance. Processes should reflect the lived reality of people with disabilities in poverty, who may

not have a solvent estate upon death, may not have an executor identified, and family members, if any exist, might be experiencing their own health and financial challenges. As such, we recommend that the processes put in place should not be punitive and should reflect the principles of dignity, inclusion, and respect.

Regarding reconsideration of decisions made under the Act:

Similar to existing social assistance and income support programs including Canada Pension Plan - Disability (CPP-D) determinations, there should be an internal review process that utilizes internal adjudicators within the Office of Disability Issues (ODI) at Employment and Social Development Canada (ESDC) to reconsider decisions first and foremost. We recommend that the regulations define the process for reconsiderations, and specify how the applicant can trigger that process in an accessible, barrier free and timely manner. A longer reconsideration period, such as the 90 days for reconsideration of CPP-D decisions, as well as provision for late reconsideration requests with a reasonable explanation would be appropriate.

Regarding appeals:

As seen through twenty-five years of experience with the Ontario Disability Support Program (ODSP), a program's definition of disability requires testing and refinement through application, adjudication and appeals. Effective appeal mechanisms enable full consideration of adjudication decisions to allow for the refinement of the definition through litigation. Great care must be taken in designing an accessible appeal mechanism to ensure that the most vulnerable applicants have meaningful appeal rights.

Federal income support credits and benefits delivered through the Canada Revenue Agency (CRA), such as the Disability Tax Credit (DTC) and the Canada Child Benefit (CCB), are appealed through a lengthy objections process, and ultimately through the Tax Court of Canada. This process is prohibitively onerous, expensive, intimidating, and not accessible to clients living near or below the poverty line. We therefore recommend the right to appeal a denial of the benefit or the benefit amount through a tribunals-based appeals mechanism that allows for the careful, timely and transparent consideration of the impact of the disability on the whole person. This is the case for

ODSP, Employment Insurance (EI), and Canada Pension Plan-Disability (CPP-D).

Such a Tribunal must be empowered to consider oral testimony and make decisions *de novo*. There must also be a statutory right of appeal to the Federal Court. Through this process, the Canada Disability Benefit (CDB) definition of disability will evolve, through litigation, to more completely encompass the breadth of lived experiences of persons with disabilities. Consideration may be given to expanding the jurisdiction of the Social Security Tribunal (SST) to hear such appeals, or taking on learnings from that Tribunal such as the recent addition of the navigator service to assist individuals with CPP-D appeals. It will be critical that the decision-making body continuously seeks to be responsive, inclusive and equitable, to meet the diverse needs of individuals living with disabilities from across the country and provide individual and comprehensive accommodations during the appeal process. Furthermore, to the fullest extent possible, any tribunal body hearing applicant appeals associated with the CDB should include adjudicators with lived experience of disability.

Regarding compliance and enforcement:

With any programs that provide benefits, there may be an extremely small fraction of people who knowingly provide false information, for which there are already provisions under the Criminal Code of Canada. The vast majority of the time, errors are made unknowingly and in good faith. To prevent these accidental errors, all communications regarding the Canada Disability Benefit (CDB), including application materials, decisions, and letters must be plain language.

Furthermore, it must be made clear that accidental errors on applications made in good faith will not have negative consequences that could deter people from applying or reporting errors. The best way to prevent false information and consequent administrative penalties is through a low barrier application process with benefit navigation support available, as mentioned earlier.

While we are strongly against financial penalties, we stress that to reduce the potential for penalties, the government needs to build pathways and navigation supports into the program that allow individuals to access the benefit with ease. This can only be done by ensuring that people have supports available to them to avoid making mistakes in the first place.

When an error has been identified, the first course of action should be to have a

conversation with the individual to understand the circumstances. It is critical that these conversations provide accommodations on a case-by-case basis, whatever they may be. There are shared duties between administrators and recipients, including a duty on administrators to provide accurate and timely information.

Lastly, postponement of attendance at meetings should not be seen as an admission of guilt or avoidance, as people with disabilities may experience health conditions and accommodations that require flexibility; we recommend that the government develop a clear pathway to account for this and to help people with disabilities navigate the process.

Regarding best practices and tools that could support persons with disabilities in applying for the benefit or other federal programs:

It is important to do outreach to hard to reach communities, rather than passive promotion of the benefit. Outreach needs to meet people where they frequent, including food banks, libraries, shelters, community health centres, settlement agencies, etc. There are two important components for outreach. The first is to offer Service Canada booths (a roadshow across the country on a continuous basis, for example). The second is to provide funds for nonprofits that may have a well-established trusting relationship with individuals to do their own outreach and to help people navigate the benefit application process. This is an additional option to offer.

Further, we urge the government to consider barriers to access for low income people and we recommend a dedicated 24/7 telephone line for people to call or text with questions or in need of support with their application in a language of their choice, to provide clarity and ensure that they submit a successful application the first time.

It is important that this hotline be staffed by trained, patient and diverse individuals who are not only fluent in the benefit processes, but who also understand the lived experiences of people with disabilities in poverty. Ideally, these individuals would be at arm's length from the actual decision-makers so that people are not intimidated to ask questions. There should also be a renewed focus on people who have care providers and may not be accessing mainstream services, as well as outreach to those who provide care and may be able to assist and advocate for those eligible. It is important to meet people where they are at, rather than expecting people to seek out administrative support as this process can be onerous, timely, and burdensome.

Regarding best practices and tools that might help persons with disabilities who are experiencing homelessness, from racialized communities or members of other communities or groups:

In addition to the above, the government should make efforts to go to these communities and set up application booths (multiple times not just once) with people to assist with the application process. These could be set up in food banks, libraries, community health centres, legal clinics, service providers, doctor's offices, etc. The government could also go to remote communities and to Indigenous reserves, or emulate what was done with the COVID-19 vaccines, where vaccines were taken into communities with individuals who spoke the language instead of expecting individuals to come to a centralized large-scale hub. The bottom line is that the government should go to individuals, and not the other way around, which means the outreach must be active, and not passive.

As well as having all application processes in plain languages, it should be offered in multiple languages to ensure accessibility, as is done with civic engagement and voting to maximize uptake. Additionally, the government should be talking to shelters, housing service providers, refugee/newcomer resettlement agencies, etc.; even though they're not disability advocates, they are experts on other relevant issues that could support the benefit uptake.

The government should also consider adjusting the burden of proof for people with disabilities who are unhoused, racialized or living in remote communities, because they face higher barriers to acquiring all the necessary information and documentation to qualify. For example, when it comes to voting, people living in shelters can have someone attest to their address; we recommend that the lowest possible threshold to meet that burden of proof be considered for certain populations.

Regarding the Canada Disability Benefit Act regulations broadly:

It is imperative that the Canada Disability Benefit (CDB) serve as a supplement — not as a replacement — to other federal, provincial, territorial and/or private disability-related benefits, and that the federal government engage in negotiations with the provinces, territories and private insurers to preclude the clawback of any of the aforementioned benefits. It is critical to consider benefit interactions for people with



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disabilities who are in existing programs, such as provincial/territorial and/or federal support programs.

For example, Ontario Disability Support Program (ODSP) rates and benefit clawbacks trap recipients in deep, legislated poverty and fail to provide the necessities of life, including adequate food and shelter. Provincial and territorial clawbacks to the CDB would undermine the original stated intent of the benefit, which is to lift “working age” people with disabilities out of poverty. Failure to implement this critical first step will only serve to pad sub-national governments’ bottom lines while denying recipients the full impact of income security benefits necessary to succeed, and realize greater social/economic inclusion and lives of dignity.

Agreement from the provinces and territories for the harmonization of legislative frameworks to prevent the clawback of these disability benefits is critical. A recent example of such successful harmonization of targeted poverty reduction measures is the elimination in Ontario of the clawback from social assistance of the Canada Pension Plan-Disability (CPPD) contributor’s child benefit and surviving child’s benefit in 2017. Preventing clawbacks would also help to ensure that people with disabilities are still able to access the full suite of services and benefits currently afforded to them under other programs. For example, services such as coverage for prescription medications and medical supplies are an integral part of ODSP. If the federal government does not work with provincial and territorial governments to prevent clawbacks, people with disabilities not only risk losing income benefits, but also access to medical benefits and other critical disability support services.

Similarly, the insurance industry must be engaged in negotiations to ensure that similar clawbacks and exclusions do not occur within private disability insurance schemes that would undermine the very purpose of the CDB. Mechanisms must be put in place to prevent private insurers from making financial gains at the expense of CDB recipients. Above all, the financial security of people with disabilities who will receive the CDB must be at the centre of all negotiations between the federal government, provincial and territorial governments and insurance companies.

The comments and feedback above are submitted by YWCA Toronto in participation with the Defend Disability Coalition. YWCA Toronto is the city’s largest multi-service organization serving women, girls, and gender diverse people. Each year, our Association serves over 13,000 people



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in more than 30 programs. We help community members escape violence, move out of poverty and access safe, affordable housing. We also work tenaciously to challenge gender and racial inequities.

To engage in advocacy work at YWCA Toronto means amplifying the voices of the community members we serve, drawing attention to the issues and barriers they face, and pushing for progressive policy solutions. Recognizing that Indigenous women, Black women, racialized women, immigrants, people living with disabilities, seniors, trans people, and youth are impacted by policy choices and systems of power differently, we strive to incorporate an intersectional gender equity lens in all of our work as we broadly advocate for gender equity, racial justice and poverty reduction.

For reference and further information, please contact Leah Wilson, Manager of Advocacy at lwilson@ywcatoronto.org or Sami Pritchard, Interim Director of Advocacy & Communications at spritchard@ywcatoronto.org.