

Rights-Based Regulations for the Canada Disability Benefit

Submitted to the Office for Disability Issues, Employment and Social Development
Canada by Citizens for Public Justice & Partners, December 2023

Introduction

The development of the regulations for the Canada Disability Benefit (CDB) is a critical opportunity to model what a rights-based income security program could look like in Canada. Our organizations and the thousands of members we represent have high expectations for this new program, stemming not only from the depth and breadth of the need it could address, but also from its potential to recognize and uphold disabled people as rights-holders and valued members of society.

Too often we have heard discussions about the Canada Disability Benefit and other income security and social programs framed by questions like, “How can we afford this?” This approaches the program and prospective recipients as a matter of charity, rather than a matter of rights. Existing social assistance programs also tend to treat recipients with suspicion, trading support for intrusive surveillance, and trying to minimize costs rather than maximize uptake and impact. One of the reasons the CDB is so sorely needed is because existing income supports, health insurance, and social services across the country are so grossly inadequate, inaccessible, inefficient, and dehumanizing. These programs must be improved to ensure investments in the CDB are able to achieve maximum impact - it cannot do it alone.

The regulations of the CDB must make a marked departure from these patterns. Our recommendations are intended to support policymakers in developing rights-based, equitable, transformative solutions to the shameful levels, length, and depth of poverty experienced by disabled people and their households in Canada. We must not lose sight of the intention of this benefit to lift disabled people out of poverty; indeed, we must go even further to make the most of this opportunity to uphold disabled people’s economic and social rights and the right to an adequate standard of living.

Our recommendations address regulations related to eligibility and enrolment; adequacy; and appeals and accountability. We gratefully acknowledge the work of Defend Disability, Inclusion Canada, March of Dimes Canada, the Women’s Legal Education and Action Fund (LEAF), and the Income Security Advocacy Centre (ISAC) in informing these recommendations, in addition to the signatories of this submission. We welcome any questions about the recommendations presented here and opportunities to provide feedback on draft regulations.

Recommendations

Eligibility & Enrolment Processes

Eligibility criteria and application processes must be clear and simple to navigate. People who already receive provincial or territorial disability benefits and Canada Pension Plan Disability Benefits should be automatically enrolled. As existing programs exclude many people with disabilities (including those with episodic disabilities), there should also be a process for people not automatically enrolled to apply for the Canada Disability Benefit.

All information about who is eligible and how to apply for the CDB must be available in a variety of formats, languages, and modes of communication, taking into consideration varying experiences of disability and investing in resources and personnel to support people in applying for the CDB. Application instructions and decision-making processes must be simple, transparent, and exemplify best practices in accessible, trauma-informed, anti-oppressive design and delivery.

“Accessibility Standards for the Canada Disability Benefit must be world class. Design the application and administrative processes in accordance with co-creation principles as noted. These principles emphasize meeting the accessibility needs of those the benefit will serve, and the importance of reaching all who are eligible, including people with disabilities in hard-to-reach communities. It is also essential to acknowledge that people with disabilities will seek out help in different ways, and to establish efficient information-sharing and communication processes within and between each level of government in Canada and non-governmental agencies/organizations.”

March of Dimes¹

Recommendations

1. The definition in the *Canada Disability Benefit Act* is broad, referring to the *Accessible Canada Act*, wherein “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.” 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.
2. Due to this more inclusive (and realistic) definition of disability than what is used in current disability benefits, there are likely to be many new applicants. Provisions would

¹ March of Dimes Submission on Bill C-22, <https://www.ourcommons.ca/Content/Committee/441/HUMA/Brief/BR12068474/br-external/MarchOfDimesCanada-e.pdf>

be made in the regulations and funding for the CDB for communication aides and personal supports. Community disability organizations are in an ideal location to provide such personal supports and should be funded by the federal government to do so. Evaluation data related to the program's administration, process and outcomes should be collected from its implementation, made publicly available and contribute to the five-year review.

3. While the *Canada Disability Benefit Act* refers to working-age persons with disabilities, specific eligibility criteria have been left to the regulations currently in development. We encourage the government to extend the CDB eligibility criteria to all persons with disabilities, honouring the obligation to guarantee that economic, social, and cultural rights are “exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²
4. We affirm the statement and recommendation of Defend Disability that “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.”³
5. The benefit should go to the individual, not the household, to support their autonomy. The benefit should be paid based on an individual income test to avoid intrusive and stigmatizing investigations, making judgments regarding assumed romantic and common-law relationships, or penalizing disabled people for being in romantic and common-law relationships.
6. The benefit should be available to all residents of Canada regardless of immigration status.
7. Reassessment timelines should recognize the differing natural courses and durations of disability diagnoses. Chronic, stable disabilities, for example, should not need to be reassessed as often as episodic, deteriorating, or temporary disabilities or conditions. Health care professionals should be able to provide attestations that cover different reassessment timelines.
8. Eligibility for the CDB should be income-tested, with need as measured by income and based on annual income tax returns and other attestation processes specific for First Nations.
9. There should be no behavioural requirements including those related to employment to establish or maintain eligibility for the CDB.
10. Individuals should be able to apply and request benefit alterations at any time throughout the year if financial circumstances change. The assessment of these requests and implementation of benefits should be timely.

² Article 2 of the International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

³ Defend Disability, <https://defenddisability.files.wordpress.com/2023/12/defend-disability-guide-comments-for-canada-disability-benefit-regulations-online-engagement-tool-december-2023.pdf>

11. The CDB should not be tied to an asset test to encourage asset accumulation and foster the resilience of individuals and families.

Adequacy

In determining the amount of CDB payments, it is critical that regulations reflect the economic and social rights of people with disabilities, the right to an adequate standard of living, and the reality that people with disabilities are disproportionately impacted by poverty in Canada. This can be attributed to a number of factors including inadequate income supports, services, and accommodations; under-employment; persistent ableist systems, stereotypes, and stigma associated with disability; lack of affordable, accessible housing; and intersecting systemic barriers related to race, colonialism, language, gender, sexual orientation, class, criminalization, immigration status, and other identities and experiences.

The calculation processes and amounts set for the CDB should also reflect the higher costs of living for disabled people and their households. While huge gaps are already well-documented between all existing social assistance programs in this country and even the most conservative low-income threshold⁴, the situation is far worse for many disabled people in Canada, contributing to their disproportionate rates (and depth) of poverty.

Recommendations

12. Building on the recommendations proposed by Defend Disability⁵, we assert that the CDB should be stacked with other income supports and programs to establish a minimum income floor that takes into account the higher costs of living experienced by many disabled people and the disproportionately high rates of poverty among disabled people in Canada. We recommend that the CDB bring individuals' incomes at least 30% above low-income thresholds as estimated by the Market Basket Measure (MBM) and the Low Income Measure (LIM), using the higher of these two thresholds where there is variance. While the *Canada Disability Benefit Act* specifically directs the government to consider Canada's Official Poverty Line, which is the Market Basket Measure (MBM), this does not (and should not) preclude the use of additional indicators of poverty. The LIM, for example, is more highly correlated than the MBM with health status and well-being⁶ and would generally provide a higher income floor that would address the disproportionate rate and depth of poverty experienced by many disabled people. This approach would reflect applicants' rights to an adequate standard of living and the higher costs of living with a disability not captured in MBM or LIM thresholds alone. Regulations

⁴ See, for example the Welfare in Canada Report by Maytree Canada at <https://maytree.com/changing-systems/data-measuring/welfare-in-canada/>

⁵ Defend Disability, <https://defenddisability.files.wordpress.com/2023/12/defend-disability-guide-comments-for-canada-disability-benefit-regulations-online-engagement-tool-december-2023.pdf>

⁶ See, for example, Fritzell, J., Rehnberg, J., Bacchus Hertzman, J., & Blomgren, J. (2015). Absolute or relative? A comparative analysis of the relationship between poverty and mortality. *International journal of public health*, 60, 101-110; or Wilkinson, R. G. (1997). Socioeconomic determinants of health: Health inequalities: relative or absolute material standards?. *Bmj*, 314(7080), 591.

should also address inequitable gaps in income across the population, and gaps in data used to calculate both the MBM and LIM. The MBM, in particular, does not reliably represent experiences of poverty among people living in institutional or congregate living settings, on reserves, or in remote and Northern communities, including the territories (though the new MBM-North thresholds will provide some data for the territories).

13. In recognition of the large variations in cost of living across regions (e.g., in the territories and other remote or northern communities; in rural vs urban settings, etc.) and across experiences of disability, we recommend that applicants be able to apply for additional amounts for those living in areas known to have a higher cost of living, or experiencing conditions known to require significant expenses not covered by existing health insurance or disability assistance programs or services. This is an area where the MBM could be referenced, not as an income threshold, but as a map of variations in regional costs of living.
14. We also affirm the position of Defend Disability that “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.”⁷ We also support Inclusion Canada’s recommendations that the annualized earning exemption should continue to be indexed in line with the Basic Personal Amount, and that the annualized earning exemption amount should apply to each individual and not change as a result of someone’s relationship status or who they live with.
15. We support Inclusion Canada’s recommendation that Registered Disability Saving Plans (RDSPs), Registered Education Savings Plans (RESPs), Henson Trusts or inheritances, motor vehicle accident settlements, criminal injuries compensation, First Nation/Indigenous economic dividends payments, and child support payments should be fully exempt as income. “These mechanisms and sources of income exist primarily to address the extra costs and unique needs of people with disabilities/in poverty and allow them to live with dignity. Exempting these sources of income supports personal savings and recognizes income sources related to events beyond the control of individuals.”⁸
16. Existing benefit programs must not be reduced or eliminated because the Canada Disability Benefit is introduced – this includes, but is not limited to, provincial/territorial or federal (First Nations) income support programs, housing/rent subsidies, medical, dental, employment supports and programs, vision, and transportation programs. Echoing Inclusion Canada, “Individuals should never find themselves worse off because of

⁷ Defend Disability, <https://defenddisability.files.wordpress.com/2023/12/defend-disability-guide-comments-for-canada-disability-benefit-regulations-online-engagement-tool-december-2023.pdf>

⁸ Inclusion Canada, <https://inclusioncanada.ca/wp-content/uploads/2021/07/Canada-Disability-Benefit-Vision-and-Design-July-2021-FINAL.pdf>

interaction between programs. Programs that are currently indexed (like CPP-D) should continue to be.”⁹

17. In addition to exemptions at the federal level, no existing provincial/territorial exemptions should be reduced as a result of the new benefit.
18. The CDB should be a monthly, non-taxable cash payment, indexed to inflation like the Guaranteed Income Supplement. Income thresholds for determining full payments amounts should also be fully indexed to inflation. Because the thresholds of relative measures will decrease during recessions or depressions, the threshold from the last year before the recession or depression should be used until the year it is dominated by a higher threshold. As in the *Canada Pension Plan Act*, there should be a provision that where a decrease in the consumer price index occurs, the benefit rates are not to be reduced.
19. Income received through the CDB should not be counted when determining eligibility for other benefits, services, or programs.
20. A mechanism must be in place for CDB eligibility and amounts to be reassessed at any time throughout the year, as circumstances and needs can change drastically from one tax return to the next. The assessment of these requests and implementation of benefits should be timely. Decisions must be clearly communicated (in a manner accessible to the applicant), with the onus on the government to substantiate their decision and to make this information available and accessible to the applicant, as well as outlining a set timeline and process to appeal any decisions.
21. CDB payments should be protected monies – deductions for overpayment due to recipient errors should be limited to 5-10%. Recognizing again the social and economic rights of recipients and their disproportionate risk of poverty, payments of the adjusted amount should continue even if during debt repayment. Overpayments due to administrative errors should not have to be paid back. Requirements for repayments must provide a generous timeframe with a specific date named for any time limits (i.e., not just a number of days/months from the time of the notice) and no interest should be accrued. Administrators should have the authority to write off or limit how much, if any, of an overpayment can be recovered, including where overpayments have resulted due to honest mistakes by recipients/applicants, or administrative errors or misinformation by government staff had a role in the creation of the overpayment. The financial hardship faced by the applicant/recipient due to the overpayment should also be considered, as their social and economic rights and their physical and mental well-being.
22. In cases where overpayments have been made due to inaccurate information or a change in circumstance on the part of the applicant, set a maximum limit of two years for the government to look back for overpayment. The onus must be on the government to demonstrate that an overpayment was made, and that it was not due to the government’s own error. These decisions should be subject to appeal like all other administrative decisions.
23. Consideration should be given to retroactive payments in the event that someone is erroneously cut-off.

⁹ Ibid.

Appeal & Accountability Processes

To ensure the Canada Disability Benefit is actually lifting disabled people in Canada out of poverty in an effective and equitable way, honouring the principle of “nothing about us without us,” and meeting governments’ obligation to progressively realize individuals’ social, economic, and cultural rights, we need robust evaluation and reporting procedures, as well as appeal processes and other rights-claiming mechanisms.

As with all aspects of the CDB, information and processes associated with evaluations, reporting, appeals, and accountability mechanisms must be provided in a manner that is accessible, including the provision of critical community and individual supports. This will require governments to invest in stable, core funding and resourcing of community partners to increase their capacity to provide trauma-informed support throughout people’s engagements with the CDB, from applications to appeals to ongoing accountability mechanisms. Governments must work with and through trusted local partners to provide information, support, legal counsel and representation, and other tools, taking into account the “digital divide” in being able to access and navigate digital technology.

Recommendations

24. We recommend that the Social Security Tribunal be used for appeal processes related to the CDB, and that disabled people, including those with intersecting experiences of systemic oppression, should be appointed to tribunals and to the management of tribunals for appeal processes.
25. Any and all administrative decisions should be eligible for reconsideration and appeal. These processes should not be limited only to certain types of administrative decisions.
26. Appeal rights should be laid out in any decision rendered (including the timeline, facts of the decision, how to make an appeal, etc.).
27. Robust reconsideration processes should be put in place to avoid lengthier and more administratively burdensome appeal processes. Internal appeal provisions should allow for relief and reconsiderations without making people go through the entire appeal process again.
28. Appeal timelines should be generous (i.e., well beyond existing 90-day periods) and proactively address the barriers people regularly face in accessing necessary information and supports. It is also critical to allow for the fact that people might not receive the decision at the time the government expects they have received it (e.g. mail sent to last known address for people experiencing homelessness). New timelines should be established if people can show they didn’t receive the decision until a later date.
29. The onus must be on the government, not the applicant, to provide the proof required to substantiate administrative decisions. For example, if fraud is suspected, the onus would be on the government to prove the applicant knowingly submitted a fraudulent claim (currently, the reverse is true for existing social assistance programs in Ontario, placing the onus on the applicant to prove their innocence, rather than the government to prove their guilt); similarly, if the government denies eligibility for the CDB, alters the amount to

be paid, requests a repayment, or renders any other decision, they must present the proof used to justify that decision, providing transparent, accessible documentation that the applicant can appeal.

30. Regulations should not establish any criminal offences; administrative monetary penalties would suffice. If, however, the decision is made to establish offences in the regulations, people should receive a warning before they are engaged with the criminal justice system. Inequitably disproportionate rates of incarceration, police violence, and harm experienced by disabled people in carceral systems and the strong connections between poverty, criminalization, and incarceration must be taken into consideration in the development of these regulations.
31. Governments across multiple jurisdictions must work together to avoid duplication of verification of compliance measures that lead to over-surveillance and unnecessary replication (and complication) of administrative processes. Support to maximize uptake and impact of the CDB should be prioritized above surveillance, recognizing applicants as persons with inherent rights and dignity.

Thank you for your consideration of these recommendations for rights-based regulations for the Canada Disability Benefit. We look forward to continued opportunities to engage in its development, implementation, and evaluation over time, and welcome your questions.

Sincerely,

Natalie Appleyard, Socio-Economic Policy Analyst, Citizens for Public Justice
Sid Frankel, University of Manitoba

Abilities Manitoba
Barrier-Free Manitoba
Basic Income Canada Network
The Cerebral Palsy Association of Manitoba
Campaign 2000: End Child and Family Poverty
Citizens for Public Justice
Community Legal Services of Ottawa
Disability Without Poverty
Family Advocacy Network of Manitoba
Manitoba League of Persons with Disabilities
Ontario English Catholic Teachers' Association (OECTA)
Our Voices Matter Council
Parkdale Food Centre, Ottawa, ON
The Raw Carrot: Employment With Purpose

Citizens for Public Justice (CPJ) is a national, progressive organization of members who are inspired by faith to act for social and environmental justice in Canadian public policy. Our work focuses on three key policy areas: poverty in Canada, climate justice, and refugee rights. In collaboration with many partners across the country, and centring the voices of people with lived experience of poverty and other forms of systemic oppression, CPJ works to research, develop, and advance federal policy measures that build equity, honour our human rights obligations, and put us on a path to eradicating poverty in Canada.