

## PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated February 13, 2013 in which the Ministry of Social Development (the “ministry”) determined that the appellant was not entitled to a replacement cheque for the one he alleged had been stolen, endorsed, and then cashed. The ministry held that it had no legislative authority to issue a replacement cheque in the appellant’s circumstances, that is, where the cheque had been endorsed.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 77*

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified of the time and place of the hearing, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*. On February 25, 2013 the appellant signed a Release of Information authorizing a representative to, among other things, attend the hearing. Neither was the representative in attendance at the hearing.

The written evidence before the ministry on reconsideration which was included in the appeal record was comprised of the following documents:

1. Photocopy of the front and back of cheque dated on or about December 15, 2012 [the date is difficult to read] drawn on the account of the ministry naming the appellant as payee (the "Cheque"). The Cheque was endorsed with a signature that the ministry deemed to be that of the appellant and it had been negotiated at a payday loan shop on December 19, 2012 at a city near the appellant's residence.
2. Three documents which had been signed by the appellant. The ministry introduced these documents into evidence for the sole purpose of providing three examples of the appellant's signature (the contents of the documents having nothing to do with this appeal) during the period June 25, 2003 to August 23, 2012.
3. Section 3 of the Request for Reconsideration ("Section 3") to which the appellant had appended a 3-page letter dated January 28, 2013 setting out the following information:
  - (a) Several months before the current incident a cheque the ministry mailed to his residence had been stolen. Since then he has asked that the ministry hold his cheques at its office so that he could pick them up rather than have them mailed.
  - (b) The ministry has suggested that if he doesn't want his cheques mailed that he should arrange for direct deposit to a bank account. He is not prepared to do that because he was the victim of an attempted murder and since then he has been very careful not to do anything that might leave "a paper trail that could lead to the discovery of my whereabouts by the [person who attempted to murder him]".
  - (c) He attended at the ministry office on December 19, 2012 to pick up the Cheque. He was advised by the receptionist that it had been mailed even though he had telephoned the previous week asking that it be held at the ministry office for pick-up and was told that it would be held.
  - (d) He has consulted "professionals" in handwriting analysis who told him that the endorsement on the Cheque is "a poor facsimile of my signature".
4. Section 2 of the Request for Reconsideration ("Section 2") presenting the ministry's submission on reconsideration setting out the following information:
  - (a) The appellant had been told by the supervisor to whom he spoke when he attended the ministry office on December 19, 2012 that "they had the same conversation last issue day and [the appellant] was specifically told that his cheques will be mailed, and that he needed to resolve his mailbox issue with his landlord."
  - (b) When the appellant telephoned the ministry on December 22, 2012 he was advised that the Cheque had been cashed and that he "had to attend office to complete a lost and stolen declaration for a replacement to be issued."
  - (c) The appellant attended the ministry office on December 24, 2012 seeking a replacement cheque and he was again told that the process to be followed to replace a "lost and stolen cheque" was that he would "need to sign lost and stolen declaration and copy of cashed cheque would be requested before making a decision to replace or not." The appellant

wanted to be given a blank form so that he could sign it but when he was told that it would take some time to generate and complete it he said he couldn't wait and as he left the office he said "never mind".

- (d) Later on December 24, 2012 the appellant telephoned ministry to again ask that his cheques be sent to the ministry office because of "thieves ... at his residence" and again he was told that his cheques could not be held at the ministry office for him to pick up. He was told that "this is not a solution ... that he should address this issue with the landlord ... to prevent mail being stolen."
- (e) The appellant again telephoned the ministry office on December 24, 2012 to request that his cheques be mailed to the ministry office and he was again told that since he had an address "this was not an option", that his options were "having his cheques mailed to him or having them direct deposited."

Subsequent to the date of the Reconsideration Decision the appellant's representative provided the ministry with a letter dated February 28, 2013 from the appellant's landlord (the "Landlord's Letter"). This letter stated that on December 19, 2012 the appellant had informed the landlord that "his cheque from the ministry was missing ... he suspects it was stolen." At the hearing the ministry did not object to the admission of this letter. Pursuant to s. 22(4) of the *Employment and Assistance Act* (the "EAA"), the panel admitted this letter into evidence as being in support of the information and records that were before the minister at the time of reconsideration.

The evidence set out in the reconsideration decision included the following:

1. The appellant had attended at the ministry office on December 19, 2012 at which time he was told that the Cheque had been mailed.
2. On December 22, 2012 the ministry advised the appellant that the Cheque had been cashed. The appellant stated that he had not cashed it.
3. On December 24, 2012 the ministry requested a copy of the Cheque from its bank. The copy was received on January 2, 2013. The ministry noted that the Cheque "had been endorsed ... [t]he signature on the cheque was determined as a reasonable match to your signature on file."

At the hearing the ministry advised the panel that:

1. There are circumstances in which the ministry will hold cheques for recipients of financial assistance but those are limited to persons with no fixed address, persons who are away from their residence for extended periods, persons who are in the process of moving residences or, generally, persons who for some, similar valid reason are unlikely to be at their residence on or about the time their cheques should arrive.
2. Additionally cheques are sometimes held by the ministry until the recipient addresses some default such as a failure to file a monthly report
3. At no time did the appellant report the theft to the police nor sign a declaration setting out the relevant facts.
4. Following its review of the photocopy of the Cheque and the other documents signed by the appellant, the ministry concluded that the Cheque had been endorsed by the appellant, that is, the endorsement was not a forgery.
5. The ministry had limited resources of time and manpower to pursue more than a few cases of suspected wrongdoing.

## PART F – Reasons for Panel Decision

### The issue

The issue on this appeal is whether the ministry reasonably determined to not issue the appellant a replacement cheque for the one he said had been stolen and subsequently cashed.

### The relevant legislation

EAPWDR

### Replacement of lost or stolen assistance cheque

77 If satisfied that an unendorsed assistance cheque has been lost or stolen, the minister may issue a replacement as long as,

- (a) in the case of theft, the matter has been reported to police, and
- (b) in the case of loss or theft, the recipient
  - (i) makes a declaration of the facts, and
  - (ii) undertakes to promptly deliver the lost or stolen cheque to the minister if it is recovered.

### The appellant's position

The position of the appellant on appeal was that since the Cheque was stolen he was entitled to a replacement cheque. He had not endorsed it so the apparent endorsement was a forgery. His right to a replacement cheque was not affected by the fact that it had been cashed. He had not received the money; that was sufficient to establish his right to having the Cheque replaced. If there was any question of fault, the fault lay with the ministry because he had repeatedly warned it that his mail was insecure and the solution was for the ministry to hold his cheques at the ministry office where he would attend to pick them up. The ministry had refused to accommodate him and so any problems that flowed from that refusal were for the ministry to rectify.

### The ministry's position

The position of the ministry on appeal was that, since the Cheque was endorsed, it had no legislated jurisdiction to issue a replacement cheque. It did have an unwritten policy (that was not referred to in the reconsideration decision) but, in the present circumstances, it was of no assistance to the appellant. The appellant had not complied with that policy. That policy required, first, that the appellant report the theft to the police and, second, complete and sign a declaration setting out the facts relating to the theft. In the meantime the ministry would obtain a copy of the front and back of the Cheque and, after comparing the endorsed signature to other examples of the appellant's signature, the ministry would determine whether, in its opinion, the signature on the Cheque was a reasonable likeness of the appellant's signature. If it was not a reasonable likeness, the ministry had a discretion to issue a replacement cheque. If it was reasonable likeness the ministry would deem the Cheque to have been endorsed by the appellant and, accordingly, not issue a replacement cheque.

The ministry said that the appellant had failed to report the theft to the police and had refused to complete and sign a declaration. Further, after comparing the endorsed signature on the Cheque and three other specimens of the appellant's signature, in the ministry's opinion the endorsed

signature was a good likeness of the specimen signatures. The ministry deemed that the appellant had endorsed the Cheque. This was sufficient, the ministry held, to disentitle the appellant to a replacement cheque.

As regards the appellant's assertion that the ministry should have agreed to hold his cheques for pick up, the ministry said it had no obligation to so. In the circumstances of the appellant, since he had a fixed address at which he lived, it was for the appellant to ensure that his mail delivery was secure. Alternatively, if that was not possible or if he did not want mail delivered to his address, he could have arranged for direct deposit to a bank. It was for the appellant to avail himself of one of these alternatives and, if he failed or refused to do so, the risk of loss of a cheque fell upon him.

### **The status of the Cheque**

Section 77, EAPWDR gives the ministry the discretion to replace an unendorsed disability assistance cheque that has been lost or stolen. The panel deemed that an endorsement on a cheque which had been forged was a nullity or of no effect. Accordingly, the panel proceeded on the basis that section 77 was applicable to the Cheque.

The ministry dealt with the issue of whether or not the endorsed signature was a forgery by comparing the endorsement on the Cheque to three specimen signatures of the appellant. The ministry was satisfied that the four signatures were sufficiently similar for it to conclude that the endorsed signature was the appellant's. The panel agreed that based solely on the visual comparison the ministry's conclusion was not unreasonable. However, the panel did not consider that a mere visual comparison was determinative of the issue of whether the endorsed signature was a forgery. The critical consideration was that the onus of proving that the endorsed signature was a forgery was for the appellant to discharge. Absent such proof it was reasonable for the ministry to say that if the endorsed signature appeared to be the appellant's then, until proven otherwise, the ministry would deem it to be the appellant's signature.

The panel then reviewed what the appellant had done to discharge that onus. In a word, the appellant did nothing ... other than repeat his bare statement that he had not endorsed the Cheque. The ministry told him that if the Cheque had been stolen, he had to report this to the police. He did not do so, then or later. The ministry also told him that he had to complete and sign a declaration setting out the facts substantiating his claim. He attended at the ministry office on December 24, 2012 and inquired about the form but when he was told that it would take a little time to prepare the document he left the ministry office saying he had no time. He never returned to deal with the form.

Having deemed the endorsed signature on the Cheque to be that of the appellant, and the appellant having done nothing to establish that it was not, the ministry reasonably concluded that it was dealing with an endorsed cheque. Accordingly, it had no reason to issue a replacement cheque. The panel concluded that this was a reasonable application of the applicable legislation in the circumstances of the appellant.

### **The obligation to hold cheques**

There remains to be considered the appellant's contention that ministry had an obligation to agree to his request that it hold his cheques for pick up and, had it accepted that obligation, the present problem regarding the Cheque would not have occurred. It is the panel's view that the policy of the ministry that it will not hold cheques for persons who have an address and are living at that address is

reasonable. Moreover, it was reasonably applied to the appellant.

The ministry urged the appellant to arrange with his landlord a more secure arrangement for mail. There is no evidence that he followed up on this suggestion. Alternatively, the ministry urged the appellant to set up an account into which the ministry could make direct deposits. The appellant said that he could not do so because of a fear that this would enable a person who posed a threat to him to track him. The panel was unable to make sense of this objection to direct deposits.

The appellant also said that on several occasions, including the occasion involving the Cheque, the ministry agreed to hold his cheque for pick up. This contention was denied by the ministry and the panel, faced with this conflict in evidence, held that the appellant's version of these events was not credible but that of the ministry was. In this regard, the panel noted the ministry's evidence, accepted by the panel, that in the month prior to the issue of the Cheque the appellant was expressly told by the ministry that his cheques would be mailed, not held for pick up [see Part E, 4(a)].

The panel concluded that the manner in which the ministry dealt with the appellant's request that the ministry hold his cheques for pick up – that is, that it would *not* to do this - was reasonable.

**Conclusion**

The panel found that the decision of the ministry to not issue a cheque to the appellant to replace the Cheque was a reasonable application of section 77, EAPWDR in the circumstances of the appellant. Accordingly, the February 13, 2013 Reconsideration Decision is confirmed.