

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the “ministry”) Reconsideration Decision of November 7th, 2018 in which the ministry determined that the appellant was not eligible to receive a replacement of his November 2018 assistance cheque, because his November 2018 assistance cheque had been endorsed; pursuant to Section 92 of the Employment and Assistance Regulation (EAR).

PART D – RELEVANT LEGISLATION

EAR *Employment and Assistance Regulation, Section 92*

PART E – SUMMARY OF FACTS

The information before the ministry at the time of reconsideration included the following:

- 1) The ministry notes that the appellant has been a recipient of income assistance since February 2018.
- 2) The ministry notes the appellant's November 2018 assistance cheque was mailed to his address, where he resides.
- 3) October 29, 2018 – the appellant advised the ministry that his cheque did not arrive in the mail. At that time, the ministry worker reviewed the file, and noted that the system indicated the cheque had been cashed.
- 4) October 30, 2018 – the ministry reviewed a copy of the cashed cheque and determined the cheque was endorsed (signed), and the signature was consistent with the appellant's signature on file. The ministry determined that because the cheque was cashed and endorsed, they were required to deny the request to replace the cheque.
- 5) November 1, 2018 – The appellant submitted a request for reconsideration. At the time, he advised that he had multiple signatures on file that look nothing like the one on the back of the cheque and that he always cashes his cheques at Money Mart.

Additional Information

The appellant did not attend the oral hearing. After waiting for five minutes and checking to ensure the appellant had been notified of the hearing, the panel proceeded in the absence of the ministry, pursuant to Section, 86(b) of the Employment and Assistance Regulation.

At the hearing, the ministry advised that she had an observer for training purposes in the room with her. The panel had no objections to her attendance, and she was permitted to attend the hearing.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of November 7th, 2018 in which the ministry determined that the appellant was not eligible to receive a replacement of his November 2018 assistance cheque, because his November 2018 assistance cheque had been endorsed; pursuant to Section 92 of the Employment and Assistance Regulation (EAR).

The relevant section of the legislation is as follows:

Employment and Assistance Regulation, Section 92

Replacement of lost or stolen assistance cheque

92 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.

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for a replacement of the November income assistance cheque, because the ministry system indicated that the cheque had been mailed to the appellant's residence, had been cashed, and the cheque had been signed by the appellant.

The ministry relied on section 92 of the EAR, where it states if the ministry is satisfied an *unendorsed* cheque has been stolen, the minister may replace the cheque if the matter had been reported to the police and the recipient makes a declaration of the facts and undertake to deliver the stolen cheque to the minister if recovered.

The appellant's position, as submitted in his Notice of Appeal, is that some other person had signed his cheque and the ministry does not believe him. Further, the appellant provides in his Request for Reconsideration; that the ministry had determined that the signature on the back of the cheque had similarities to other signatures that the ministry had on file, and the ministry relied on the matched signatures to deny the replacement cheque. The appellant further provides that he only ever cashes his assistance cheque at Money Mart, which is not where the November 2018 cheque had been cashed.

Section 92 of the Employment and Assistance Regulation stipulates that if the minister is 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 panel finds that the evidence establishes that the appellant did report the missing cheque to the ministry on

October 29, 2018. The panel considered that the ministry reviewed their own system, and had determined that the cheque had been cashed with a signature that was similar to that of the appellant. The panel finds that the evidence establishes that the decision of the ministry to deny the replacement cheque was provided to the appellant on October 30, 2018.

In deliberations, the panel considered that nothing in the evidence before the reconsideration officer had indicated that the ministry had provided the appellant with the information related to reporting the stolen cheque to the police, as a requirement to having the cheque replaced. The panel considered that the ministry notes indicate that the appellant was informed that the cheque had been cashed, and that the signature on the cheque appeared to be similar to other signatures that they had on file. Once the ministry had shown that the cheque had been cashed, it is reasonable to assume one of two possibilities. Either the cheque had been stolen and endorsed fraudulently, or the appellant had cashed it himself. As the ministry decided the latter, the only recourse for the appellant was to file a request for reconsideration as he did. The panel finds it is reasonable in this circumstance that the appellant did not go to the police to file a report because he was not instructed to by the ministry and because the ministry had already made its final decision regarding the replacement cheque. The panel considered that the requirement of the appellant to report the incident to police, upon learning that the cheque had been signed and cashed was the responsibility of the ministry; to inform the appellant of this process before making their own determination that the signatures matched and deny a replacement cheque.

The panel considered that the legislation provides for a replacement cheque if the stolen cheque is unendorsed, and interpreted that to mean that the cheque would need to be unendorsed by the intended recipient. However, in cases where someone could have forged a signature, the determination of such fraudulent activity would fall under police jurisdiction. The panel finds that the ministry acted unreasonably when it determined the signatures matched, and denied the appellant the replacement cheque. The panel finds that the evidence establishes that the ministry should have informed the appellant of the police reporting process, and afforded the appellant the opportunity to report the alleged stolen cheque before making any determination.

Accordingly, the panel finds that the decision of the ministry to deny a replacement cheque, an unreasonable application of the applicable enactment in the circumstances of the appellant. Therefore, the panel rescinds the ministry's decision pursuant to section 24(1)(a) and section 24(2)(b) of the Employment and Assistance Act. The appellant therefore is successful in his appeal.

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)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/12/17

PRINT NAME

Signed on behalf of: Susan Johnson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/12/19

PRINT NAME

Jeremy Sibley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/12/19