

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“Ministry”) reconsideration decision dated March 14, 2023, in which the Ministry determined that the Appellant had received an overpayment of disability assistance in the amount of \$290.42.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, sections 18 and 19
Limitation Act, sections 6 and 8
Financial Administration Act, section 86.1
Employment and Assistance Act, section 24(2)

Full text of the legislation is provided in the Schedule of Legislation at the end of the Reasons.

Part E – Summary of Facts

The hearing took place by videoconference. The Appellant did not attend the hearing. The Advocate attended on behalf of the Appellant and confirmed that the Appellant was aware of the hearing and had instructed the Advocate to appear and make submissions for him.

Evidence Before the Ministry at Reconsideration:

The Appellant is a sole recipient of disability assistance under the Employment and Assistance for Persons with Disabilities Act.

On December 19, 2018, the Appellant told the Ministry that he had not received a cheque for \$290.42, which was part of the Appellant's disability assistance for January 2019. The Appellant signed a Declaration and Undertaking for a Lost or Stolen Payment, on December 24, 2019. The Ministry stopped payment on cheque #0667861 ("Cheque #1") and issued a replacement cheque, which the Appellant cashed on December 27, 2019.

On January 8, 2019, the Appellant went to a cheque cashing company and also cashed Cheque #1.

On December 1, 2022, the Ministry notified the Appellant that, as it appeared that the Appellant had endorsed Cheque #1 and cashed it at the cheque cashing company, the Appellant had received an overpayment of \$290.42. On January 12, 2023, the Ministry added the debt to the Appellant's file and sent the overpayment decision to the Appellant.

Documents provided by the Ministry with the Overpayment Notification are:

- An official copy of Cheque #1, apparently endorsed by the Appellant and processed at a financial institution
- Declaration and Undertaking of a Lost or Stolen Payment, completed and signed by the Appellant.

Additional Evidence:***Appellant:***

In a written submission, the Advocate stated:

- An investigator with the Ministry told the Advocate that:
 - it is likely that funds from the BC government account would not have been released to the cheque cashing company because of the "stop payment" on the cheque 2 weeks previously; and
 - the cheque cashing company would probably have tried to reclaim funds from the Appellant when Cheque #1 bounced.
- The Appellant had attempted to cash Cheque #1 but it was not admitted that the Appellant had received funds for Cheque #1 as the Ministry alleged.

At the hearing, the Advocate stated:

- The Appellant does not remember what happened when he tried to cash Cheque #1, due to his mental capacity:
 - the Appellant has schizophrenia with auditory hallucinations, developmental disorder possibly due to fetal alcohol syndrome, and a low IQ
 - he cannot read or understand documents and has difficulty managing his money.

At the end of the hearing, the Advocate provided a six-page printout from the cheque cashing company, dated February 13, 2023 and titled “Customer Debt Information.” The printout refers to “BC Employment and Assistance 667861 \$0.00 01/09/19” and shows ledger entries starting January 9, 2019, including:

01 14 19	\$0.00	20	Memo Acct/Rsrch	forwarded copies of the returned gov't chq to fraud
01 09 19	\$290.42	6	Initial Return	CheckMate To POS Export - Init RJ
01 09 19	\$40.00	79	RI Fee	CheckMate To POS Export

The rest of the ledger entries are identified as “Store Payment” for “non-TL related debt.” The entries show payments from the Appellant, in varying amounts, starting on January 15, 2019, and continuing until April 20, 2021. Payments total \$330.42.

The Advocate explained that he had gone to the cheque cashing company with the Appellant to request the printout, to show that the cheque cashing company had recovered the amount of Cheque #1 from the Appellant.

Ministry:

The Ministry Representative stated that the Ministry would not have received the cancelled Cheque #1, endorsed by the Appellant, unless the cheque had been cashed and paid from Ministry funds. While the Ministry had stopped payment on Cheque #1 before it was presented for payment at the cheque cashing company, it is not uncommon for a financial institution to issue payment on a stopped cheque, and the Ministry is obligated to honour that payment.

In answer to questions from the Panel about the investigation process, the Ministry Representative stated that:

- The Financial Services Authority receives the financial reconciliation and copies of cancelled cheques.
- The Ministry investigation process begins when the Financial Services Authority notifies the Ministry that there has been a double payment.
- After notification from the Financial Services Authority, the Ministry investigation then determined that there were two payments to the Appellant for the same benefit period.
- The Ministry Representative did not know when the Ministry discovered the overpayment, or whether the Ministry had contacted its financial institution about payment of funds in error.

Additional Evidence:

Neither party objected to the admission of the additional evidence. The Ministry Representative said that he had had enough time to review the printout from the cheque cashing company and did not need an adjournment.

The Panel finds that the additional written and oral evidence is admissible under section 22(4) of the Employment and Assistance Act. The written and oral evidence of the Advocate provides additional information about the Appellant's interactions with the Ministry and the cheque cashing company, and the process by the Ministry and the cheque cashing company when a cheque is presented for payment after the Ministry has stopped payment. The printout from the cheque cashing company provides additional information about the Appellant's dealings with the cheque cashing company about Cheque #1. The additional oral evidence of the Ministry provides information about the Ministry investigation process for overpayments. Therefore, the Panel finds that the additional written and oral evidence is reasonably required for the full and fair disclosure of all matters relating to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's reconsideration decision, that the Appellant received an overpayment of \$290.42, was reasonably supported by the evidence, or was a reasonable application of the legislation in the Appellant's circumstances.

Appellant's Position:

The Advocate maintains that the Ministry's investigation process is unfair to recipients of income assistance because it puts the onus on the recipient to prove that they have not received an overpayment. Instead, the Advocate argues that the onus should be on the Ministry to prove that it has made the overpayment.

The Advocate argues that the Ministry has not provided sufficient proof of an overpayment in the Appellant's situation. The Advocate says that the Ministry should have to provide proof, such as bank statements, to show that the Ministry's financial institution released funds to the cheque cashing company to cover Cheque #1 even though the Ministry had stopped payment on the cheque.

The Advocate says, further, that under the Limitation Act, there is a two year limitation period for commencing a claim for the overpayment. As the alleged overpayment occurred in January 2019, the Advocate maintains that the Ministry is out of time to claim repayment.

Lastly, the Advocate submits that the printout from the cheque cashing company proves that the Appellant repaid the amount of Cheque #1, and therefore the Appellant did not receive an overpayment.

Ministry's Position:

The Ministry argues that, under section 86.1 of the Financial Administration Act, the limitation period for commencing a claim for overpayment is six years, not two years, and therefore the Ministry is not out of time to claim repayment.

The Ministry maintains that cancelled Cheque #1 is proof that the Ministry has paid the amount of \$290.42, as it would not have received the cancelled Cheque #1 if it had not honoured the cheque. The Ministry says that it was required to honour Cheque #1 even though it had directed its financial institution to stop payment on the cheque.

The Ministry also says that, while it could not prove that the Appellant cashed the cheque himself, once the cheque has been endorsed it is like cash. Under the Declaration and Undertaking for a Lost or Stolen Payment, the Appellant is responsible to reimburse the Ministry if an endorsed cheque is presented for payment. The Ministry acknowledges that, if a financial institution contacts a recipient and recoups money paid out in error, then there is no overpayment.

With respect to the printout from the cheque cashing company, the Ministry says that the document does not show that the payments relate to Cheque #1, and could be for a previous debt of the Appellant.

Panel Reasons:

The Panel finds that, after receiving and cashing a replacement cheque for Cheque #1, the Appellant cashed Cheque #1 at the cheque cashing company on January 8, 2019.

The Ministry had stopped payment on Cheque #1, but maintains that, nevertheless, its financial institution paid the cheque cashing company when Cheque #1 was presented for payment, and the Ministry was responsible for the amount of the cheque. The Ministry also says that the fact that it was able to produce a copy of the cancelled cheque proves that it paid out funds for Cheque #1.

However, the printout from the cheque cashing company references #667861 (the number of Cheque #1) from "BC Employment and Assistance" and indicates "returned gov't chq" on January 9, 2019. The cheque issuer, the reference number and the amount of the cheque correspond with Cheque #1 cashed by the Appellant the day before. Given the information in the printout, the Panel cannot conclude from the copy of the cancelled cheque that Ministry funds were transferred to the cheque cashing company when Cheque #1 was presented at the Ministry's financial institution. The Panel gives greater weight to the printout and finds that Cheque #1 was returned to the cheque cashing company by the Ministry's financial institution, after the Ministry stopped payment on the cheque.

Further, the printout shows, and the Panel finds, that between January 15, 2019 and April 20, 2021, the Appellant has repaid \$330.42 to the cheque cashing company, representing the amount of Cheque #1, plus a \$40 fee for a returned cheque. The requirement that the Appellant repay the cheque cashing company is consistent with the finding that Cheque #1 was not honoured by the Ministry's financial institution. In any event, even if the Ministry's financial institution honoured Cheque #1 as the Ministry maintains, the Appellant has not received an overpayment, as he has been required to repay the cheque cashing company.

As the Panel has found that there is no overpayment, it is not necessary for the Panel to determine if the Ministry is out of time to claim repayment under the Limitation Act, or if the Limitation Act applies to recovery of overpayments through deductions from subsequent assistance payments under section 19 of the Employment and Assistance for Persons with Disabilities Act.

The Advocate argues that the Ministry's investigation procedure for overpayments places an unfair onus on the recipient to disprove overpayments. He says that, where there is an alleged overpayment, the Ministry should have to provide evidence, such as a bank statement, to show that the Ministry transferred funds to the recipient's financial institution. He maintains that a cancelled cheque alone does not prove that the Ministry paid the cheque.

The Panel's mandate is to determine whether the Ministry's reconsideration decision is reasonable in the Appellant's circumstances, not to assess overall Ministry policies and

procedures. However, the Panel does note that, even without the printout, it had concerns that the information provided by the Ministry as proof of overpayment might not show conclusively that there has been an overpayment. The written evidence that the cheque was returned, and the funds were repaid, gives some weight to the Advocate's argument that the Ministry's possession of a cancelled cheque does not prove that there was an overpayment.

At the same time, the Panel notes that the overpayment allegation arose because the Appellant attempted to cash a cheque that he had declared as lost. The Panel observes that it may not be unreasonable in that situation to ask a recipient to assist the Ministry in determining whether there has been an overpayment. The Panel also notes that the Advocate apparently obtained the printout two months before the hearing. If the document had been provided to the Ministry in time for the Ministry to consider the information or investigate further, the parties might have avoided the need for an appeal hearing.

Conclusion:

The Panel finds that, in light of the additional evidence that Cheque #1 was returned to the cheque cashing company and the Appellant has repaid the funds to the cheque cashing company, the Ministry's reconsideration decision is no longer reasonably supported by the evidence. The Panel rescinds the reconsideration decision. The Appellant is successful in the appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Act

Overpayments

s. 18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

Liability for and recovery of debts under Act

s. 19 (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

(a) recovered in a court that has jurisdiction, or

(b) deducted, in accordance with the regulations, from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

(2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).

(3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.

(4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

Limitation Act

Basic limitation period

s. 6 (1) Subject to this Act, a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered.

(2) The 2 year limitation period established under subsection (1) of this section does not apply to a court proceeding referred to in section 7.

s. 8 Except for those special situations referred to in sections 9 to 11, a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:

- (a) that injury, loss or damage had occurred;
- (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
- (c) that the act or omission was that of the person against whom the claim is or may be made;
- (d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

Financial Administration Act

Limitation period for government claims

s. 86.1 (1) In this section:

"claim" has the same meaning as in the Limitation Act;

"government claim" means a claim in debt, or any other claim for payment or recovery of money in a specified or ascertainable amount, by

- (a) the government,
- (b) a corporation or other organization within the taxpayer-supported government reporting entity, or
- (c) a corporation or other organization that is not within the taxpayer-supported government reporting entity but that was within the taxpayer-supported government reporting entity on or after the date on which the act or omission on which the claim is based took place and before the expiry of the limitation period created by this section applicable to the claim,

and includes a claim by the Insurance Corporation of British Columbia for vehicle indebtedness;

"limitation period" has the same meaning as in the Limitation Act;

"taxpayer-supported government reporting entity" has the same meaning as in the Budget Transparency and Accountability Act;

"vehicle indebtedness" has the same meaning as in section 93.1 of the Insurance (Vehicle) Act.

(2) Subject to subsection (3), the Limitation Act applies to government claims, and, for that purpose,

- (a) a reference to a claim in that Act is deemed to be a reference to a government claim, and
- (b) the references in section 6 of that Act to 2 years and a 2 year limitation period are, when applied to the government claim, deemed to be references to 6 years and a 6 year limitation period respectively.
- (3) Subsection (2) does not apply to a government claim for which a limitation period has been established under an enactment other than the Limitation Act.

Employment and Assistance Act

Panels of the tribunal to conduct appeals

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER 2023-0087

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)

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

Part H – Signatures

Print Name
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2023/04/20

Print Name
Shelly McLaughlin

Signature of Member

Date (Year/Month/Day)
2023/04/20

Print Name
Connie Simonsen

Signature of Member

Date (Year/Month/Day)
2023/04/20