

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated June 19, 2023 (the “Reconsideration”), in which the Ministry determined that the Appellant had received an assistance overpayment amount of \$335 that must be repaid.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, Sections 18 and 19

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 teleconference.

The Appellant does not receive disability assistance; she receives Medical Services Only.

Information before the Ministry at the time of the Reconsideration—Documents:

- The Appellant's bank statements: August 2022-May 2023
- June 2, 2023 Request for Reconsideration with Appellant's handwritten reasons stating she had not received any benefits for some time, her (bank) account is negative, and that more than \$335 has been garnished from her. The Appellant also said she thought the debt was cleared at the time she transferred to CPPD; that her CPPD cheque is garnished as well. The Appellant explained she owes \$71.83 per month to the City of New Westminster and is at risk of losing her home
- April 28, 2023 Ministry Overpayment Notification—signed June 2, 2023 by the Appellant
- April 28, 2023 Ministry Decision Letter advising of overpayment
- April 28, 2023 Ministry Overpayment Chart
- Image of cashed cheque #1 (the original cheque)—front and back—signed August 7, 2018
- Declaration for a lost or stolen payment (cheque #1)—signed by the Appellant: July 11, 2018

Information before the Ministry at the time of the Reconsideration—Background:

- On July 5, 2018 the Appellant attended the Ministry office to pick up the July assistance cheque for \$335 (cheque # 1)
- July 9, 2018 the Appellant attended the office stating the July assistance cheque was lost and requested a replacement
- On July 11, 2018 the ministry issued a replacement cheque for \$335 (cheque # [REDACTED]).
- On July 13, 2018 the replacement cheque was cashed
- On March 29, 2023 the ministry received information from Central 1 bank that the lost cheque (cheque # 1) had been cashed on August 7, 2018
- On April 13, 2023 the Ministry sent notification of the overpayment through My Self Serve
- On April 28, 2023 the debt was added to the Appellant's file

Additional Evidence

At Reconsideration and at the hearing, the Appellant indicated that there was a misunderstanding about the second cheque that she received; the second cheque had been requested by her and received for shelter.

In response to questions from the Panel at the hearing, the Ministry described its usual process for stopping payment when a cheque is reported lost or stolen, along with expected timelines for the stopped payment to take effect.

The Panel finds that the additional evidence is admissible under section 22(4) of the Employment and Assistance Act. The oral evidence of the Appellant provides

additional information about the Appellant's interactions with the Ministry regarding the lost cheque. The additional oral evidence of the Ministry provides information about the Ministry process with lost or stolen cheques. 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, which determined that the Appellant received an overpayment of \$335 was reasonably supported by the evidence or, in the circumstances of the Appellant was a reasonable application of the legislation.

Appellant's Position

At the outset of the hearing, the Appellant said that there was a misunderstanding and she disagreed about cashing the cheque and whether the cheque was lost or stolen; there was no overpayment because the second cheque she received was for shelter and not to replace a lost or stolen cheque. The Appellant says she remembers it this way because a few things were happening at the same time in July 2018: (i) she had received new BC ID; and (ii) she was excited because she had secured new shelter. Based on this, the Appellant agreed she did cash both cheques because one cheque was for her new shelter and so there was no overpayment. The Appellant further argued that the Ministry must have inputted information wrong when they noted on the Declaration that the cheque was lost.

In addition, the Appellant said very strenuously that she did not cash both cheques. In reply to questions from the Panel, the Appellant agreed that she had received the first cheque and signed the back of it but after that, the cheque was lost and/or stolen along with her new BC ID and someone else must have cashed it using her stolen ID. The Appellant then agreed that she had returned to the Ministry, requested a second cheque and received the replacement cheque, and that the notation of "lost cheque" on the Declaration was correct—"if I said lost cheque, then it was a lost cheque". The Appellant maintained that she only cashed the second cheque and wondered why the Ministry was not providing proof of that.

Finally, the Appellant said it was by chance that she even knew about the alleged overpayment as she had not received the April 2023 Ministry letter and only found out in May 2023 when she attended the Ministry office directly. However, the Appellant also highlighted that per her bank statements, money had been taken from her BC assistance and CPPD assistance dating back to August 2022, and she believed any overpayment issue had been dealt with by those deductions. In her June 2, 2023 Request for Reconsideration, the Appellant also noted "Wasn't this debt dealt with when I transferred to CPPD. I believe \$25 was deducted from my welfare cheques to pay for this debt". The Appellant confirmed she had transferred to CPPD in August (2022) and said that she had been told that if there were any BC assistance overpayments that all overpayments would be paid back from her CPPD.

Ministry's Position

The Ministry relied on the written reasons provided in its Reconsideration and highlighted that under Section 18 of the legislation, an overpayment must be repaid. The Ministry said that notes are made with each event related to the Appellant and with each time that the Appellant comes to an office. These notes are included in the Appellant's file. The Ministry says those notes confirm the history of what occurred:

- On July 5, 2018, the Appellant attended the Ministry office to pick up her July assistance cheque for \$335 (cheque # 1)

- On July 9, 2018, the Appellant attended the office and advised that she lost her July assistance cheque and asked that the cheque be replaced
- On July 11, 2018, the ministry issued a replacement cheque for \$335 (cheque # 2). The Appellant signed a Declaration and Undertaking for a lost and stolen payment agreeing that the original payment is the property of the Province of British Columbia and must be returned if found, and any benefit from the payment would be fraudulent
- On July 13, 2018 the Appellant cashed the \$335 replacement cheque (cheque # 2)
- On August 7, 2018 the Appellant cashed the lost cheque [cheque # 1] (which the Ministry received information about from its bank, Central 1 on March 29, 2023)
- On June 2, 2023 the Appellant confirmed receiving notice of the overpayment

The Ministry said that the signature and BC ID number provided on the August 2018 image of the lost cheque, match the signature and BC ID on record with the Ministry. The Ministry says that because the replacement cheque was not disputed as an overpayment, a copy of that cheque was not provided. The Ministry said that the statements provided by the Bank confirm that both \$335 cheques were cashed. Although usual process is that a cheque reported lost would have a stop payment notice submitted to the bank and in place within an estimated five days, the Ministry noted that it was possible that timelines could be delayed, and a cheque reported lost could be cashed before it was cancelled.

The Ministry noted that CPPD assistance had been in place before the March 2023 notice of overpayment and so no garnishment had occurred. The Ministry also said that upon transfer to CPPD, for any recipient including the Appellant, the usual approach is that BC assistance does not automatically cease and that any garnishment for overpayments would only occur after notice to, and discussion with, the recipient. The Ministry indicated that the Appellant is currently not receiving benefits and that any amount to be garnished would occur when the Appellant returned to assistance.

Analysis and Decision

The Panel finds that an overpayment occurred in 2018; the Appellant did receive two \$335 cheques and cashed both cheques.

Although the Appellant stressed repeatedly that there was no overpayment as she correctly received two payments and/or she did not cash both cheques, the Appellant's statements together with the available documented evidence from the Ministry and from the Appellant herself, do not support the Appellant's stated belief. Similarly, the Appellant's assertion that she received a second cheque for shelter assistance and no cheque had been reported lost, is inconsistent with the available evidence.

In her Request for Reconsideration and ultimately at hearing, the Appellant acknowledged she received two cheques and that an overpayment occurred, but she believed the debt had been already paid. In particular, she noted in her Request for Reconsideration: "Wasn't this debt dealt with at the time when I transferred to CPPD. I believe \$25 was deducted from my welfare cheque's(sic) to pay for this debt... thought my debt was cleared at the time of transferring to CPPD". In further support of her knowledge of the overpayment and her belief that it had been paid, the Appellant relied on her bank statements from August 2022 through May 2023 with various credit amounts circled. The Appellant says these show that her CPPD and Province of

BC payments had been garnished to pay the overpayment. However, no overpayment deductions could have occurred between August 2022 and May 2023 where CPPD was in place *before* any overpayment was identified; Ministry documents note the overpayment was not identified until March 2023 and the Appellant says she had not been made aware until May 2023. In any event, the Appellant recognized that there was an overpayment but was unclear as to whether the debt had been repaid or not.

On July 13, 2018, the Appellant received a replacement cheque. Upon receipt, she signed a Declaration agreeing “I received the (original) cheque but I no longer have it”. As well, in response to “Circumstances regarding knowledge of cheque” the Ministry indicated “Client picked up cheque than (sic) lost it”. The signed Declaration together with the Appellant’s firm statements “If I said lost cheque, then it was a lost cheque” confirm the first cheque was declared lost and a replacement provided to, and accepted by, the Appellant.

Despite at times agreeing that she had cashed both cheques, the Appellant also maintained that someone else must have cashed the lost cheque; that the cheque had been stolen. However, the cheque image from August 7, 2018 contains a signature matching one the Ministry has on file for the Appellant, of which the Appellant does not dispute. The cheque image also shows the BC ID information specifically referred to by the Appellant. The Appellant confirmed the BC ID had just been received and contained her picture. The Appellant indicated she remembered the July 2018 events well—she had received the new BC ID at the same time as she had been securing new shelter. Given the undisputed signature and BC ID number contained on the cheque image, the Panel is satisfied that the Appellant cashed the cheque. On this basis, the panel finds that the August 7, 2018 image further confirms that the Appellant cashed the original \$335 cheque.

Given the Panel’s determination that the Appellant received cheque #1 and cashed it, as well as receiving cheque #2 and cashing it, the Panel concludes that the Appellant received an overpayment of \$335. Consistent with Sections 18 and 19 of the legislation, the Appellant received an assistance amount of \$335 in August 2018 for which she was not eligible. As such, the Appellant is obligated to repay the overpayment of \$335.

Conclusion

The Panel confirms the Ministry’s decision that determined that the Appellant had received an assistance overpayment amount of \$335. This means the Appellant is not successful with her appeal.

Relevant 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.

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 2023-0197

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

Carmen Pickering

Signature of Chair

Date (Year/Month/Day)
2023/08/10

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)
2023/08/08

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)
2023/08/10