

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision dated July 24, 2023 (the "Reconsideration"), in which the Ministry determined that the Appellant was not entitled to receive a \$635 replacement cheque for income assistance for the month of July.

Part D - Relevant Legislation

Employment and Assistance Act, Section 22 (4)
Employment and Assistance Regulation, Section 92

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 in person on August 22, 2023.

The Appellant is a sole recipient of income assistance.

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

- Request for Reconsideration with the Appellant's handwritten reasons stating that on June 21, 2023 he gave his July income assistance cheque to another individual to cash as the Appellant does not have a bank account. Once deposited into an ATM, the bank put a hold on the cheque and flagged it as fraudulent due to the signatures not matching. On June 23, 2023 the bank issued a letter stating that a stop payment had been placed on the cheque and it will be returned to the Ministry. The Appellant indicated that he requires the money; along with expenses to pay, he was going to purchase work supplies in order to secure contracting work.
- June 27, 2023 letter from the bank's branch manager indicating that the deposit had been flagged as the payee does not match account holder name but the cheque is unable to be returned to the Appellant; the cheque had already been negotiated and deposited into the bank machine and the bank does not have access to retrieve it. The bank's fraud department confirms the cheque will be returned as an item unpaid
- June 23, 2023 letter from the bank's branch manager confirming that the bank's fraud department will return the cheque to the government
- Images of the \$635 cheque—front and back—signed by the Appellant June 21, 2023

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

- On June 21, 2023 the Appellant received his July assistance cheque for \$635
- On June 21, 2023 the Appellant and his friend went to the bank to cash the cheque; the Appellant signed the back of the cheque, and through the ATM, his friend deposited the cheque to his bank account
- Ministry records confirm the signature on the June 21, 2023 cheque match the signature on file for the Appellant
- The Appellant attended a Ministry office to request a replacement cheque, which was denied

Additional EvidenceInformation After Reconsideration*Documents*

- Bank statement of the Appellant's friend: June 2, 2023- July 4, 2023 showing the June 21, 2023 \$635 deposit and the \$100 withdrawal

- August 4, 2023 Appeal request where the Appellant indicates his Reasons for Appeal: "Check (sic) is being returned to Ministry with funds, Account is closed, Attached bank statement"

At Reconsideration and at the hearing, the Appellant confirmed that he had endorsed the cheque in order to have a friend cash it for him because the Appellant does not have a bank account. The Appellant noted that he had followed this process of endorsing his cheque for a friend with a bank account to cash for him a number of times in the past and had no problems at other banks. In this case, the Appellant confirmed that the bank machine released \$100; he and his friend then went into the bank to request that there be no further hold on the funds and they were told that the bank required 24 hours to release further funds. The Appellant followed up two days later and was advised that the cheque had been flagged as fraud, a stop payment applied, and the cheque would be mailed back to the Ministry. The bank stated that it could not legally cash a cheque that had been endorsed but where the signature and account name do not match; the information was new to the Appellant as he had no previous issues with this approach at other banks. Finally, the Appellant confirmed that there was no police report made and no police file regarding the cheque—it was not lost or stolen.

The Appellant told the Panel that the situation had not only placed a great financial burden on him, it had significantly strained a valued friendship of 15 years. Without his full July assistance payment, the Appellant had also fallen behind on several bills and had been unable to meet his out-of-Province payment obligations; along with the outstanding bills piling up he was now being charged interest on the outstanding amounts. Finally, the Appellant noted that he had been advised that it could take the bank's fraud department 200 days to send the cheque back to the Ministry.

In response to questions from the Panel at the hearing, the Ministry agreed that the Ministry was not out money as a result of what had occurred with the Appellant's July assistance cheque. The Ministry representative also agreed that 200 days was a long time to wait and given the information shared by the Appellant including the June 27, 2023 letter from the bank, that the Ministry's Prevention and Loss Management department may be able to expedite things by following up directly with the bank.

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 actions and process regarding the endorsed cheque. The additional oral evidence of the Ministry provides information about the Ministry process when reviewing requests for replacement 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 was not entitled to receive a \$635 replacement cheque for income assistance for the month of July was reasonably supported by the evidence or, in the circumstances of the Appellant, was a reasonable application of the legislation.

Appellant's Position

Throughout the hearing, the Appellant did not dispute that he had endorsed the cheque for his friend to cash for him. The Appellant said that he had not had any problems with this approach previously and was very surprised to learn this bank treated it as fraud. The Appellant's position is that the cheque should be reissued quickly; 200 days is too long to wait and the June 27, 2023 letter from the bank clearly indicates the cheque will be returned to the Ministry as an unpaid item. The Appellant has no money and he has many financial obligations that he is falling behind on.

Ministry's Position

The Ministry relied on the written reasons provided in its Reconsideration and highlighted that under Section 92 of the Regulation, an endorsed cheque is unable to be replaced. The Ministry indicated that it had no discretion in this regard; a replacement cheque is only provided if an unendorsed cheque is declared lost or stolen. The Appellant's July assistance cheque had not been lost or stolen; the cheque had been endorsed and cashed. The Ministry said that the June 27, 2023 letter from the bank was not enough for the Ministry to immediately reissue a cheque; the Ministry will have to receive the July assistance cheque back from the bank.

Analysis and Decision

The Panel finds that based on the available evidence and the legislation, the Ministry was reasonable in determining that the Appellant is not entitled to be reissued the \$635 July assistance cheque.

Section 92 of the Regulation states that the Ministry may issue a replacement cheque where it is satisfied the cheque is *unendorsed* and has been *lost or stolen*. The Appellant agreed that the copy of the cheque image showed his signature; the Appellant further confirmed in writing and verbally at the hearing that the cheque had been endorsed by him and it was his signature on the cheque. The Appellant also noted that there was no police file number regarding the cheque—the cheque was not lost or stolen. Finally, bank statements and letters from the bank confirm that the cheque had been endorsed and \$100 of the \$635 cashed.

Conclusion

The Panel is sympathetic to the Appellant's circumstances and the hardship of experiencing a delay of up to 200 days to receive a replacement cheque. The Ministry representative indicated that the Ministry could contact the bank and seek to speed up the return process for the cheque, resulting in repayment sooner to the Appellant. The Panel encourages the Appellant to connect with their Ministry representative(s) to pursue this approach.

The Panel confirms the Ministry's decision which determined that consistent with the legislation, the Appellant was not entitled to receive a \$635 replacement cheque for his July income assistance. The Appellant is not successful with his appeal.

Relevant Legislation

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.

Employment and Assistance Regulation:

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.

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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)

2023/08/25

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2023/08/25

Print Name

Linda Pierre

Signature of Member

Date (Year/Month/Day)

2023/08/25