

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") decision to deny the Appellant's request to replace her December 2023 Income Assistance.

Part D - Relevant Legislation

Employment and Assistance Regulation - Section 92 ("Regulation")

Relevant legislation is included in Appendix A.

Part E – Summary of Facts

From the Ministry's files:

The Appellant is a sole recipient of income assistance. Her file was reopened November 10, 2016.

On December 6, 2023, the Appellant requested replacement of her December 2023 Income Assistance, reporting someone stole her bank card and spent her December income assistance money. The Appellant stated that she had no funds left.

On December 6, 2023, the Ministry reviewed the Appellant's request for a replacement of her December 2023 Income Assistance and determined that the Appellant is not eligible for the supplement because she did not meet all the criteria. The Ministry stated that it does not replace lost or stolen cash, and also noted that the Appellant may be eligible to apply for crisis supplements.

On December 19, 2023, the Appellant submitted a Request for Reconsideration. The Appellant included a handwritten note that read in part: "I had lost my bank card. It was found. I was in Alberta when my assistance was automatically deposited into my account. I had tap on my card. It was found. The person who had found it, tapped it. TD highlighted the amount that was spent. Considering that my Christmas bonus was on there, I didn't get the chance to get presents."

In its January 9, 2024 Reconsideration Decision, the Ministry noted the Appellant had reported receiving her \$1,100 December 2023 income assistance via direct deposit and that the funds were stolen after someone stole her bank card and withdrew the money. As the Appellant does not meet the legislative requirements of Section 92 of the Regulation, the Ministry reconfirmed its original decision to deny the Appellant's request to replace her December 2023 income assistance.

On January 10, 2024, the Appellant filed a Notice of Appeal. Under the Reasons for Appeal section of the form, the Appellant wrote, "I gave the proof that I needed to by the Bank also proof I was not in BC when the bank card was stolen."

The Appellant requested that her Tribunal Appeal Hearing be conducted in writing. She was given an opportunity to make an additional written submission and did not do so.

On January 26, 2024, the Ministry sent a written submission advising that its “submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision.”

Admissibility of New Evidence

The panel admits the Appellant’s statement under the Reasons for Appeal section of her Notice of Appeal application and the Ministry’s January 26, 2024 written submission as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, and the panel has weighed that evidence in making its decision.

Part F – Reasons for Panel Decision

The decision to be made is whether the Appellant qualifies for a supplement to replace her December 2023 income assistance. The panel is required to determine if the Ministry's reconsideration decision was a) supported by the evidence, and b) a reasonable application of the applicable enactment.

Legislation

Section 92 of the Regulation states the following:

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 argued that she qualified for a supplement to replace her December 2023 income assistance because someone had stolen her bank card and then fraudulently withdrew these funds using her bank card's tap feature. The Appellant also stated she had provided proof of the fraudulent withdrawals through documentation from the TD bank that highlighted the fraudulent withdrawals, as well as proof that she was not in BC when these transactions happened.

The Ministry argued that under Section 92 of the Regulation, it only has authority to replace a lost or stolen *unendorsed assistance cheque* [emphasis added]. The Regulation requires that the person who requests the supplement must have reported the incident to the police, makes a declaration of the facts and undertakes to promptly deliver the lost or stolen cheque to the Minister if it is recovered.

The panel notes that the Appeal Record does not include the documentation that the Appellant referenced from the TD bank, or the proof that she was not in BC when the fraudulent activity occurred. There also is no reference in the Appeal Record to this fraudulent activity having been reported to the police.

Regardless of these information gaps in the Appeal Record, Section 92 of the Regulation only gives the Ministry discretion to replace a lost or stolen “unendorsed assistance cheque.”

Panel Decision

The panel finds that, since the legislation only permits replacement of a lost or stolen unendorsed assistance cheque and the Appellant did not have an endorsed assistance cheque stolen but rather funds taken from her account without her authority when she lost her bank card, that the legislation does not permit replacement of the funds. Accordingly, the Ministry reconsideration decision was supported by the evidence and this decision was a reasonable application of Section 92 of the Regulation in determining that the Appellant does not qualify for a supplement to replace her December 2023 income assistance.

The panel notes the Ministry had stated that the Appellant may be eligible to apply for crisis supplements.

Conclusion

The panel is empathetic to the Appellant’s situation. However, based on these findings, the panel confirms the Ministry’s reconsideration decision. The Appellant is not successful in her appeal.

**Appendix A
Relevant Legislation**

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

Melissa McLean

Signature of Chair

Date (Year/Month/Day)

2024/02/04

Print Name

Inge Morrissey

Signature of Member

Date (Year/Month/Day)

2024/02/04

Print Name

Janet Ward

Signature of Member

Date (Year/Month/Day)

2024/02/04