

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) Reconsideration Decision dated 16 May 2024, which determined that the appellant received an overpayment of \$1,100 for December 2023 income assistance.

Specifically, the ministry determined that the appellant cashed a replacement cheque in January 2024 after having already cashed the original cheque and would have to return one of the duplicate payments as per Section 27 of the *Employment and Assistance Act*.

**Part D – Relevant Legislation**

*Employment and Assistance Act* (the “Act”) section 27 and 28.

**Part E – Summary of Facts**

The hearing took place on June 24, 2024, as an in-person hearing. The ministry representative attended by telephone.

**Evidence at the time of reconsideration**

In the Request for Reconsideration, the appellant submitted:

- 1) A “Declaration and Undertaking for a Lost or Stolen Payment” application dated November 28, 2023 and signed by the appellant;
- 2) A bank imprint dated March 19, 2024 of cheque # 4658410 dated November 22, 2023 for \$1,100.00, signed and deposited by the appellant on January 22, 2024 at TD Bank;
- 3) A bank imprint dated March 19, 2024 of cheque # 4658410 dated November 22, 2023 for \$1,100, signed and deposited by the appellant on January 26, 2024 at BMO;
- 4) An “Overpayment Chart” printed on April 16, 2024 which stated there had been an overpayment to the appellant of \$1,100.00 “due to duplicate assistance received due to cashing Dec2023 IA cheque #4658410 after declaring it lost/stolen”;
- 5) A letter from the ministry dated April 17, 2024 stating that the appellant was notified “on March 27, 2024 ... that an overpayment may have occurred on your file”... but the appellant “did not respond and the ministry had completed its review.” The letter added that an overpayment “occurred because of inaccurate or incomplete reporting. It was determined that you did not take the necessary steps to ensure accuracy and completeness when reporting your cashing Dec 2023 IA cheque#4658410 after declaring it lost/stolen on Nov 28 2023”... “as a result, a sanction will be applied to your file”;
- 6) An “Overpayment Notification” dated April 16, 2024 stating that an overpayment of \$1,100 has occurred;
- 7) A second letter from the ministry dated April 17, 2024 to the appellant stating the ministry had determined that an overpayment had occurred;
- 8) A letter from TD Bank dated January 23, 2024 to the appellant stating that “the following deposited item(s) has been returned unpaid”, with a copy of cheque #4658410 stating “Payment Stopped”;
- 9) A bank statement from TD Bank showing a mobile deposit credited on January 22, 2024 of \$1,100.00 and a debit on January 24, 2024 stating “returned cheque” in the amount of \$1,100.00;
- 10) The request also included a statement from the appellant that when he received the cheque in January 2024, he “mistakenly didn’t check the date and just mobile deposited and then I checked and it did not get cashed in my bank account and also

the bank sent me the stopped /returned / confirmation cheque. That shows the check is not cashed". He added that he checked again with the bank recently and the bank "confirmed it is not cashed".

According to the Ministry's decision, which is not disputed by the appellant, the following is a chronology of events:

- 1) November 22, 2023: the ministry mailed the appellant his December income assistance cheque (#4658410) for \$1,100;
- 2) November 27, 2023: the appellant advised the ministry that his cheque did not arrive and requested a replacement cheque;
- 3) The ministry mailed a replacement cheque to the appellant;
- 4) March 27, 2024: the ministry initiated a review, stating that cheque #4658410 had been cashed twice: on January 22, 2024 and January 26, 2024. The ministry mailed the appellant an overpayment notification;
- 5) April 11, 2024: the ministry reviewed the appellant's file, and, after not hearing from him added \$1,100 debt to the appellant's file;
- 6) April 26, 2024: the appellant requested a reconsideration of this decision;
- 7) May 2, 2024: the appellant submitted his Request for Reconsideration and included a bank statement from TD Bank which showed a payment reversal of the January 22, 2024 deposit.

The ministry completed its review of the Request for Reconsideration on May 16, 2024.

In the Reconsideration decision, the ministry found that:

- 1) The appellant had deposited cheque # 4658410 twice: at TD Bank on January 22, 2024, and at BMO on January 25, 2024.
- 2) The TD Bank deposit was stopped by the bank and "the ministry is satisfied that you did not receive an overpayment because of this deposit attempt".
- 3) Regarding the BMO deposit, the ministry stated that, since the appellant had "not provided any evidence to show the payment was returned by BMO, the ministry is not able to establish that you did not cash both the original and replacement cheque".
- 4) The appellant received \$1100 for December 2023 assistance that he was not eligible for, and you must repay this amount to the ministry" as per Section 27 of the *Employment and Assistance Act*.

### **Testimony at the hearing**

The appellant spoke about his situation.

He thought his cheque for his December 2023 income assistance was lost and requested a replacement cheque. In January 2024, he received a replacement cheque and deposited it thinking it was for January income assistance.

He began working at a new job and was busy and forgot to call the ministry when they requested information about the deposit.

The cheque was deposited at TD Bank but then returned. The payment to BMO was also deposited and returned. As both deposits were returned, he has not received payment of \$1,100 as the ministry states.

The appellant submitted to the panel a "Returned Item Advice" statement from BMO dated January 29, 2024 for cheque #4658410 which stated that the amount of \$1,100 had been debited from his account as the cheque was returned unpaid.

The appellant does not understand why he should have to return funds he did not receive.

The ministry representative explained the regulations pertaining to overpayments.

Upon questioning, the ministry representative confirmed that the replacement cheque was issued in January 2024 and that no other cheques were issued to the appellant in January 2024. She also noted that replacement cheques do not include detailed payment references such as what month payments were for, or that they are replacement cheques.

#### Admissibility of Additional Information

The panel admitted the appellant's BMO "Returned Item Advice" two page statement as evidence under Section 22(4) of the *Employment and Assistance Act* which allows for the admission of evidence reasonably required for a fair full and fair disclosure of all matters related to the decision under appeal. The ministry representative did not object to the admission of this evidence by the appellant and did not submit additional information during the hearing.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's Reconsideration Decision that determined the appellant had received an overpayment of income assistance was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that the appellant received an overpayment of his December 2024 income assistance?

**Ministry position**

The ministry found that the appellant cashed the December 2023 original cheque #4658410, and subsequently its replacement twice more: once to his TD Bank account and a few days later to his BMO account.

The ministry determined that the TD Bank deposit was returned and was satisfied that this did not result in an overpayment. However, the ministry did not receive evidence that the BMO deposit was returned and found that the appellant had received an overpayment of \$1100, which would need to be returned to the ministry.

**Appellant's position**

The appellant agrees that he mistakenly deposited the replacement cheque, not knowing it was a replacement and believing it was for January 2024 income assistance.

Both deposit attempts were returned: both TD Bank and BMO stopped the deposits and debited his accounts.

During the hearing, the appellant submitted evidence that the BMO deposit was stopped by the bank and charged back to his account. He has been busy with a new job and was not able to provide this information to the ministry earlier.

**Panel's reasons**

Section 27 of the *Act* states that an "overpayment" of income assistance results when payments are made to anyone who is not eligible for it and such payments must be repaid. Section 28 of the *Act* states that any overpayments can be recovered from subsequent income assistance.

The panel notes the potential for confusion with original and replacement cheques, particularly when no details are provided on the cheque(s) relating to whether they are replacements or original and for which monthly payments the cheques relate.

The panel finds that the ministry reasonably determined, based on the evidence provided at Reconsideration, that the appellant received an overpayment.

The ministry had determined that, based on a “stopped payment” statement from TD Bank, it was satisfied that the appellant had not received an overpayment as a result of the deposit attempt of January 22, 2024 at TD Bank.

During the hearing, the appellant provided additional evidence in the form of a BMO “Returned Item Advice” which stated that the deposit of \$1,100 on January 25, 2024 was stopped and debited from the appellant’s account on January 29, 2024.

The panel finds that the new evidence provided by the appellant that the BMO deposit was returned is sufficient to show that the BMO deposit, like the TD deposit, was stopped and not remitted to the appellant’s account. As a result, the panel finds that no duplicate payment(s) now exist.

Based on the new evidence provided by the appellant relating to the return of the deposit from BMO, the panel finds that the ministry’s original decision is no longer a reasonable application of the relevant legislation. The ministry’s Reconsideration Decision is no longer reasonably supported by the evidence.

The panel rescinds the ministry’s decision. The appellant’s appeal is successful.

## Schedule of Legislation

### EMPLOYMENT AND ASSISTANCE ACT

#### Overpayments

27(1) If income 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 17 (3) [reconsideration and appeal rights].

#### Liability for and recovery of debts under Act

28 (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 income 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 income 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.

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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

Robert McDowell

Signature of Chair

Date (Year/Month/Day)

2024/06/26

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

2024/06/26

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2024/06/26