

**Reasons for Decision:**

**Order # AP1819-0452**

On <date removed>, <name removed> filed an appeal of the Director's decision to suspend their income assistance. The decision was contained in a letter dated <date removed>, although the decision had no effect until <name removed>'s November benefits became payable near the end of October.

The <date removed> letter requested bank statements, cheque copies and other documents related to any CPP Retirement cheques cashed by the appellant. Despite the fact, the Department was requesting the information for the first time; the Department informed <name removed> it was suspending their benefits at the same time as it requested the information.

At the hearing, <name removed> and the Department agreed that they had submitted the requested information, and that their November benefits had been paid. <name removed> disputed the Department's calculation of their November benefits, and its calculation of the overpayment resulting from cashing the CPP cheques.

<name removed> stated they had filed a separate appeal regarding the calculation of the November benefits. The Department stated it was prepared to discuss the calculation of the November benefits, but was not prepared to discuss the overpayment as part of this hearing.

The Board directed that the parties limit their presentations to the calculation of the November benefits.

<name removed> told the Board that the suspension of benefits and subsequent recalculation was a continuation of a long-standing legal dispute between the Department and themselves. The dispute centres around whether the Department can require <name removed> to access his CPP Retirement benefits before they turn 65 years of age.

The Department and <name removed> agreed that their counsel would hold in trust any CPP cheques issued to them while the dispute was before the courts. In the summer of <year removed>, <name removed> faced extraordinary financial pressures, including expenses for their ex-spouse's funeral and repairs to their house ordered by the City of Winnipeg. <name removed> cashed some of the CPP Retirement cheques held in trust to meet these expenses.

<name removed> voluntarily disclosed to their financial worker that they had cashed

some cheques. The Department suspended their benefits until they provided financial information related to their income in the months they cashed the cheques.

<name removed> told the Board they received two CPP Retirement cheques in October. The first cheque should have been received in September, but was delayed in the mail. The second cheque was received in late October.

<name removed> stated the Department deducted both CPP cheques from their November assistance, leaving them with almost no money for the month. The appellant asserted the Department should have applied the first cheque to their October assistance, and the second cheque to their November assistance.

Since their October assistance had already been paid, the Department should have assessed an overpayment equal to the value of the first CPP cheque, and increased their November assistance by a corresponding amount.

The Department told the Board its policy is to include income when it is accessed, not when it becomes receivable. As <name removed> accessed the first cheque in October, the Department included it in their October income.

The Department stated it had not released <name removed>'s November benefits when it received the required information. Because the calculation was not complete, the first CPP cheque was treated as current income, not past income, and it would therefore not count as an overpayment.

Beginning in December <year removed>, <name removed>'s assistance will be reduced by the monthly amount of their CPP retirement income.

The Department stated <name removed>'s monthly income did not change as a result of the way it treated the two CPP cheques. The only change was the proportion of their income derived from CPP benefits, versus the proportion derived from assistance.

<name removed> stated there was a real impact on their financial position as a result of the Department's treatment of the CPP cheques. The appellant stated the first cheque arrived in early October, and was spent in October. The appellant asserted the money was not available for their use in November.

<name removed> acknowledged they were liable for an overpayment resulting from the payment of their CPP benefits, but asserted the Department should act consistent with the intent of *The Manitoba Assistance Act*, which is to help people in need. The appellant stated the Department should exercise its discretion to treat the first cheque as an overpayment. The appellant did not cite a specific section of the *Act* to support their assertion that the Department had discretion.

The Department stated <name removed> had CPP Retirement income deducted from their assistance in the past, and ought to have known the consequences of cashing those cheques.

The original basis for <name removed>'s appeal was the suspension of their assistance due to missing information. Both parties agree that issue is now moot, and the Board will not make a decision on that issue.

The oral evidence submitted at this hearing focused on actions arising after the suspension was lifted. <name removed> has filed a separate appeal of those actions <text removed>, but both the Department and <name removed> agreed to submit their arguments to this Board.

While <name removed> raised concerns about the timing of their cash flow, the Board finds that they did not establish that they experienced an actual loss that can be remedied by the Board.

Based on a careful review of the written and verbal evidence, the Board determines the Department has assessed <name removed>'s November assistance according to the legislation and regulations, and confirms the Director's decision.

The Board notes this appeal renders <text removed> moot, and suggests <name removed> consider withdrawing that appeal.

## **DISCLAIMER**

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