

PART C – Decision under Appeal

In a reconsideration decision dated 27 March 2012, the Child Care Subsidy Service (the Ministry) determined the Appellant is liable for the repayment of \$1,161.88 of child care subsidy (CCS) that she received during the period June 1, 2010 to September 30, 2010 for which she was not eligible due to undeclared income as set out in the Child Care Subsidy Act and Regulation.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA) Section 5(2) and Section 7
Child Care Subsidy Regulation (CCSR) Section 1, definition of “employment income”, Section 7, Section 8, Section 9, Section 10 and Section 14.

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision and pertinent to the matter under appeal included:

- A Child Care Subsidy (CCS) renewal dated July 30, 2010.
- A letter dated May 3, 2010 from the Ministry to the Appellant notifying her of the policy for receiving CCS for the purpose of seeking employment for the period June 1, 2010 to August 31, 2010. The policy included states the Appellant must actively search during the period, keep a detailed work reach record and that continued eligibility will be reviewed after the 3 months.
- A CCS Eligibility Calculator for the Appellant for the period June 1, 2010 through August 31, 2010 showing an eligible subsidy for two children at \$776.79.
- A CCS Application from the Appellant dated September 17, 2010.
- Pay Stubs from the Appellant and her husband for the period for July 2010.
- Pay Stubs from the Appellant and her husband for the period for September 2010.
- A CCS overpayment calculation of \$1,161.88 dated March 21, 2012 for the months of July, August and September.
- A letter dated March 21, 2012 from the Ministry to the Appellant requesting repayment of \$1161.88 as required under CCSA, Section 7.

In January, 2012 a Verification and Audit Officer (VAO) with the Ministry reviewed the CCS payments issued for the Appellant's child during the period July 1, 2010 and September 30, 2010 along with the Appellant and her spouse's pay stubs for the same time period. The Ministry concluded the Appellant received CCS between June 1, 2010 and August 31, 2010 based on the social need of a job search, however in June 2010 the Appellant found employment but did not report the changes in her income. The VAO initially determined the Appellant received an overpayment of \$1,360.63 but met with the Appellant in March of 2012 and found the work days in June of 2010 were unclear and agreed on an adjustment. As a result, the Ministry determined the Appellant had received \$1,161.88 CCS for which she was not eligible under the CCSA. The Ministry requested repayment of these funds as required under the CCSA, Section 7.

In a letter included with the Request for Reconsideration, the Appellant states she signed the application for CCS in September 2009 when she enrolled in a college course. The letter states the Appellant contacted the Ministry in May of 2010 regarding post college eligibility of CCS and the Ministry representative stated that a 3 month post college eligibility period would be granted to help with finding employment. The Appellant states "It was not indicated to us by that representative at that time, to contact them as soon as (the Appellant) found employment." The letter goes on to state "We were led to believe that we were eligible for that 3 month period regardless if (the Appellant) found employment in the first month, second month or the third month." The letter concludes that they were misinformed by the Ministry representative and they are not accepting the debt as determined by the VAO.

At the hearing, the Appellant's Advocate, her spouse, reiterated the Appellant understood she was eligible for the CCS for the 3 month period and that the eligibility would be reviewed at the end to the 3 month period. The Advocate submits it is not fair that after one and one half years an audit concludes the Appellant owes \$1161.88. The Advocate insists the need to report any change in income was not mentioned in the telephone conversation the Appellant had with the Ministry representative when they discussed the 3 month eligibility job search period of June 1 to August 31,

2010. The Advocate acknowledged the declaration signed by the Appellant as part of the CSS application states she understood she had to supply the Ministry any changes to the information declared on the application however this declaration was signed 9 months before the June 1 to August 31, 2010 period. The Advocate concludes that the Appellant does not accept this repayment demand from the Ministry.

At the hearing the Ministry stated that an 18 month to 2 year time lag for an audit regarding CCS is not unusual in the Ministry due to the work load of the 4 VAO in the province. She stated that the legislation clearly states an over payment of CCS must be repaid and that reconsideration officers have no authority to overturn that legislation. She also noted the declaration in the CCS application is considered a binding contract. The Ministry also explained that the Ministry representatives have a "script" to guide them as they explain a CCS application over the phone and part of the script clearly states that any change in the information as specified in the application must be reported to the Ministry.

The Panel finds from the evidence presented that:

- The Appellant was notified that she was eligible for CCS for Work Search for a 3 month period by letter on May 3, 2010.
- The Appellant received CCS for Work Search during June 1, 2010 through August 31, 2010.
- The Appellant found employment in June, 2010 and was employed during June, July and August, 2010.
- The Appellant submitted her and her spouse's pay stubs and a CCS renewal application in September, 2010.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's determination that the Appellant is liable for the repayment of \$1,161.88 of child care subsidy (CCS) that she received during the period June 1, 2010 to September 30, 2010 for which she was not eligible due to undeclared income as set out in the Child Care Subsidy Act and Regulation.

The specific legislation in this appeal is:

CCSA Overpayments and repayments

7 (1) *If a child care grant is paid to a child care provider or other person who is not eligible for that child care grant, that child care provider or other person is liable to repay to the government the amount for which the child care provider or other person was not eligible.*

(2) *An amount that a child care provider or other person is liable to repay under subsection (1) is a debt due to the government and may*

(a) be recovered by it in a court of competent jurisdiction, or

(b) be deducted by it from any subsequent child care grant.

CCSR Income test

7 (1) *An applicant is not eligible for a child care subsidy for a child receiving a type of child care if*

(a) the family's monthly net income exceeds the child's threshold,

Amount of subsidy

8 (1) *If a family's monthly net income does not exceed a child's threshold, the amount of child care subsidy for the child in respect of a type of child care is the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care.*

(1.1) *If a parent is eligible for a subsidy for more than one type of child care set out in Schedule A, the minister may determine which subsidy rate applies.*

The Ministry argues the CCS program is means-tested and the submission of pay stubs and details of any other sources of income are necessary to determine eligibility for, and calculate the specific amount of CCS entitlement. Furthermore, the Application form included a signed declaration from the Appellant which states "I understand that: I am required to promptly supply information to the CCS Program if there is a change to any information I have provided in this application." The Appellant did not declare to the Ministry that she had found employment in June 2010, until she enquired about

extending her current CCS authorization until July 30, 2010, therefore an overpayment of \$1161.88 resulted.

The Appellant does not dispute that she received CCS for the period. She argues she was led to believe that she was eligible for the 3 month period regardless if she found employment or not. The Appellant also argues that she was misled by a Ministry representative to believe her 3 month eligibility for work search was approved whether or not she was employed.

The Panel finds the Ministry reasonably determined that by signing the CCS application, the Appellant declared that she understood that she is required to promptly notify any change of the original information to the Ministry, and furthermore, it is reasonable to conclude that gaining employment is understood as a change in that information.

The Panel acknowledges that during the period June – September, 2010, the Appellant is adamant that she did not purposely receive an overpayment however the facts are undisputed that she did receive a CCS for a 3 month period for work search, that she was employed during that 3 month period, and that the employment is a change in the information on her application and therefore an overpayment occurred. The Panel finds the Ministry reasonably determined that the legislation in the CCSA, Section 7 does not allow the Ministry discretion with respect to any overpayment.

The Panel finds the Ministry reasonably determined that the Appellant is liable to repay the Ministry the amount for which she was not eligible, calculated to be \$1161.88.

The Panel finds the Ministry decision was a reasonable application of the applicable enactment in the circumstances of the Appellant and confirms the decision.