

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 29, 2012 which held that the appellant is liable to repay the sum of \$2,982.57 in child care subsidy she received between June 2011 and January 2012 for which she was not eligible pursuant to Section 7 of the *Child Care Subsidy Act, CCSA*, Sections 1, 2, 7, and 8 of the *Child Care Subsidy Regulation, CCSR*, and Schedule A of the *CCSR*. The ministry determined that the appellant inaccurately reported her care provider status.

PART D – Relevant Legislation

Child Care Subsidy Act – Section 7

Child Care Subsidy Regulation – Section 1, definition of "licensed-not-required"

Child Care Subsidy Regulation – Section 1, definition of "registered licensed-not-required"

Child Care Subsidy Regulation – Section 7

Child Care Subsidy Regulation – Section 8

Child Care Subsidy Regulation – Schedule A

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration decision consists of:

- Copies of the Child Care Subsidy Arrangement forms signed by the appellant on June 10, 2011 and November 16, 2011;
- A copy of the Child Care Subsidy Overpayment Calculation dated March 1, 2012;
- A copy of the Child Care Subsidy Eligibility Calculator dated March 1, 2012;
- A copy of the Child Care Subsidy Registered Licence-Not-Required/Licence-Not-Required instructions;
- A copy of the One-Stop Business Registry dated June 3, 2011;
- A copy of the Emergency Child Care First Air & CPR/AED issued on June 18, 2011;
- A letter from the parents' of the child in care dated March 15, 2012;
- Request for Reconsideration dated March 19, 2012;

The appellant in the request for reconsideration stated that she was an applicant as a care provider. She completed the necessary forms according to the child care subsidy RLNR/LNR claim instructions guidelines. The appellant stated that the guidelines clearly states that the "the ministry will only pay child care subsidy after eligibility has been determined". The appellant further stated that "if the ministry deemed her ineligible for child care subsidy then why it was approved at the first place?" The appellant noted that she should not be penalized for the ministry's negligence.

At the hearing the appellant stated that she followed the instructions written in the ministry's form in completing the application form. The appellant said that she called the "1-800" number that the ministry provided and was told to complete the form as Registered Licence-Not-Required - RLNR. The appellant further stated that she made an appointment with a community agency in order to register after speaking with the child's mother; however, she said she cancelled her appointment when she received her first payment from the ministry. The appellant stated that after receiving the first cheque she assumed that her application was accepted and she didn't require registering her business with a community program. The appellant submitted that throughout this time, she provided the best services she could and it is not fair that now she is asked to pay back the subsidy she received for the work that is already done. The appellant further stated that if she was not eligible to receive the subsidy, the ministry should have told her immediately and not after a year.

The ministry submitted that the ministry, in good faith, accepts applications as accurate. Initial responsibility is with the applicants to provide accurate information. The ministry submitted that the audit on the appellant's file indicated that she was not registered, although she claimed she was, and as such, the ministry considered the appellant business as Licence-Not Required – LNR. The appellant was then asked to repay the difference between the two types of services to the government. The ministry submitted that the appellant by signing the application understood that it is an offence under the CCSA to supply false or misleading information.

The appellant stated that after speaking to a ministry representative she completed the form in good faith and did not mislead or provided false information.

The panel makes the following findings of fact:

- The appellant is a service provider and provided child care from June 2011 to January 2012;
- The appellant signed a Child Care Arrangement application indicating that the type of the child care she was providing was RLNR family;
- The appellant was told by the mother of the child that to be able to receive the child subsidy she should register her business;
- The appellant made an appointment with the agency; however, decided to cancel the appointment when she received her first payment;
- The appellant did not register her business;
- The appellant in an application in November 2011 indicated that her business was registered and

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named the organization she was registered with.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision dated March 29, 2012 that determined the appellant is liable to repay \$2,982.57 in child care subsidy she received between June 2011 and January 2012 for which she was not eligible as the appellant inaccurately reported her care provider status.

Section 7 (1) of the CCSA states:

Overpayments, repayments and assignments

If a child care subsidy is paid to or for a person who is not entitled to it, that person is liable to repay to the government the amount to which the person was not entitled.

- (2) Subject to the regulations, the minister may enter into an agreement, or may accept any right assigned, for the repayment of a child care subsidy.
- (3) A repayment agreement may be entered into before or after a child care subsidy is paid.
- (4) An amount that a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) 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 subsidy or from an amount payable to that person by the government under a prescribed enactment.
- (5) The minister's decision about the amount a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is not open to appeal under section 6 (3).

Pursuant to Section 1 of the CCSR:

"licence-not-required child care setting" means a child care setting that

- (a) is in the home of the primary caregiver,
 - (b) need not be licensed under the *Community Care and Assisted Living Act*, and
 - (c) is not registered under the Child Care Resource and Referral Program in accordance with the standards specified in the Child Care Resource and Referral Program Standards Manual that is on file with the office of the Deputy Minister,
- but does not include the family home of a child being cared for in the setting;

"registered licence-not-required child care setting" means a child care setting that

- (a) is in the home of the primary caregiver,
 - (b) need not be licensed under the *Community Care and Assisted Living Act*, and
 - (c) is registered under the Child Care Resource and Referral Program in accordance with the standards specified in the Child Care Resource and Referral Program Standards Manual that is on file with the office of the Deputy Minister,
- but does not include the family home of a child being cared for in the setting;

Section 2 of the CCSR states:

The minister may pay a child care subsidy if the child care is provided

- (a) in a licensed child care setting,
- (b) in a licence-not-required child care setting,
 - (b.1) in a registered licence-not-required child care setting, or
- (c) in the child's own home, but only if the child care is provided by someone other than a person who
 - (i) is a relative of the child or a dependant of the parent, and
 - (ii) resides in the child's home.

Pursuant to Section 7 of the CCSR (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, and
 - (b) the result of the calculation under section 8 (2) for the child is not more than zero.
- (2) Subsection (1) does not apply to an applicant if the child care is for a child
- (a) in relation to whom the applicant has entered into an agreement with a director under section 8 of the *Child, Family and Community Service Act*,
 - (b) in relation to whom the applicant, by agreement under section 94 of the *Child, Family and Community Service Act*, exercises a director's rights or carries out a director's responsibilities,
 - (c) of whom the applicant has custody under an order of the court under section 35 (2) (d), 41 (1) (b), 42.2 (4) (c) or 49 (7) (b) of the *Child, Family and Community Service Act*,
 - (d) of whom the applicant has custody under an order of the court under section 42.2 (4) (a) of the *Child, Family and Community Service Act*, if the applicant is the other person referred to in section 42.2 (4) (a) (i), or
 - (e) who is receiving assistance under section 6 of the Employment and Assistance Regulation and the applicant is the relative, within the meaning of that section, with whom the child resides.

Section 8 (1) of the CCSR deals with the amount of subsidy and states:

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.

(2) If a family's monthly net income exceeds a child's threshold, the amount of child care subsidy for the child in respect of a type of child care is.

(2.2) The child care subsidy for a child described in section 7 (2) is the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care the child is receiving.

(3) If child care is required for less than 20 days per month, the child care subsidy will be prorated based on the daily rate set out in Schedule A or the daily parent fee, whichever is less.

(4) If the child care is

(a) arranged or recommended where a risk assessment and written risk reduction plan have been completed by staff delegated under the *Child, Family and Community Service Act*, or

(b) recommended under the *Child, Family and Community Service Act* for a parent participating in a Young Parent Program,

the minister may pay any increase in the amount of the child care subsidy that the minister considers necessary to ensure that the child care is provided.

(5) In this section, "parent fee" means the payment made by the parent for a child care space.

Schedule A of the CCSR deals with the subsidy rates for different child care settings including subsidy rates for registered licence-not required child care setting and for licence-not required child care setting

Subsidy Rates for Licence-not-required Child Care Settings					
11	F1 – LNR (children under 19 months)	10.95	219.00	21.90	438.00
12	F2 – LNR (children 19 months and over but under 37 months)	10.10	202.00	20.20	404.00
13	F3 – LNR (children 37 months and over)	8.85	177.00	17.70	354.00
Subsidy Rates for Registered Licence-not-required Child Care Settings					

14	R1 – RLNR (children under 19 months)	15.00	300.00	30.00	600.00
15	R2 – RLNR (children 19 months and over but under 37 months)	15.00	300.00	30.00	600.00
16	R3 – RLNR(children who have reached 37 months of age but who have not reached school age)	13.75	275.00	27.50	550.00
17	R4 – RLNR (children of school age)	10.38	207.50	20.75	415.00

The appellant argued that she is disputing the reconsideration decision as she followed the instruction and provided service to her client. The appellant argued that the ministry should have not accepted her application for the child care subsidy if there was a problem with her application. She submitted that she should not repay the amount she received for the services she provided because the ministry didn't do their job at the first place.

The ministry submitted that the statement in the instruction indicating that "the ministry will only pay child care subsidy after eligibility has been determined" is related to the families and not the service providers. The ministry submitted that the ministry's decision is reasonable based on information available and the legislation. The ministry further submitted that there is no issue on whether the appellant provided services or not. The issue is that the appellant's business was not registered and as such the appellant is liable to repay the difference between the RLNR and LNR subsidy she has received.

The issue in this appeal is whether the appellant was eligible to receive child care subsidy based on RLNR and whether the appellant should replay the child subsidy she received that she was not entitle to.

Section 1 of the CCSR states that the RLNR child care setting is registered under the Child Care Resource and Referral Program - CCRRP. In this case, the applicant admitted that she did not register with a CCRRP. The appellant stated that she intended to register her business; however, cancelled her appointment when she received her first payment. The panel accepts the appellant's evidence that she did not willfully mislead the ministry; however, the panel finds that the appellant does not have the requirements to be considered a registered licence- not required child care setting and as such is not eligible to receive child subsidy based on RLNR subsidy.

Pursuant to Section 7 (1) of the CCSA, if a child care subsidy is paid to or for a person who is not entitled to it, that person is liable to repay to the government the amount to which the person was not entitled. The panel finds that the appellant's business was not registered with CCRRP and the appellant was not entitled receiving child subsidy based on a RLNR business and as such, is liable to repay the government the amount she was not entitled to.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence before it and was a reasonable application of the legislation. Therefore, the panel confirms the ministry's reconsideration decision.