

APPEAL #

### PART C – Decision under Appeal

The appellant appeals the reconsideration decision of March 21, 2012 which upheld the determination by a verification and audit officer that the appellant was liable to repay an overpayment of \$3,492.58 in child care subsidy which arose because the appellant did not report her husband's income during the period of July 2010 through February 2011.

### PART D – Relevant Legislation

*Child Care Subsidy Act*, section 7.  
*Child Care Subsidy Regulation*, sections 8 & 9

## PART E – Summary of Facts

The appellant lives with her husband and two children. The appellant received childcare subsidy for her two children during the period July 2010 through February 2011 (she continues to receive child care subsidy, but this is the period during which the overpayment arose). The amount of the appellant's childcare subsidy is based on her employment income and the income of her husband. The appellant's husband is pursuing post-graduate studies and works part-time on an on-call basis.

The evidence before the ministry at the reconsideration included the appellant's written submissions dated March 2, 2012 (7 pages) to which the appellant attached several documents, including the following relevant to this appeal:

- copy of letter from verification and audit officer dated January 4, 2012 (2 pages) with attached child care subsidy overpayment calculation chart (4 pages) dated November 8, 2011, showing calculations for the period July 2010 through October 2011 with a total overpayment of \$3,492.58;
- copy of letter from verification and audit officer dated December 7, 2011 (1 page), but acknowledged by the ministry to be the incorrect date (agreed to be after January 9, 2012);
- copies of child care subsidy eligibility calculator sheets (15 pages) for the months of July 2010, August 2010, October 2010, November 2010, December 2010, and January through October 2011.

During the period July 2010 through February 2011, the appellant received childcare subsidy for her two children, which was based on her income and her husband's status as a post-graduate student who was not employed. In March 2011, the appellant applied to renew her childcare subsidy and, at the time, indicated that her husband was employed part-time, providing confirmation of his income. Based on the information in the appellant's husband's paystubs, the ministry determined that the appellant's husband received income starting in July 2010 through February 2011, the period in which the ministry had determined the appellant's childcare subsidy based solely on her income. The appellant does not disagree that her husband received employment income during the period July 2010 through February 2011.

The ministry's verification and audit office conducted an audit of the appellant's childcare subsidy and determined that she had been overpaid by an amount of \$3,492.58. The appellant disputes the amount of her income on which the overpayment calculation was based, together with the length of time for which the overpayment was calculated, as the overpayment calculation sheets used by the verification and audit officer run from July 2010 through October 2011.

The panel makes the following findings of fact:

- The appellant received childcare subsidy during the period July 2010-February 2011, which subsidy was based solely on her income as her husband's income during this period was not included in the calculation of the household income;
- The appellant's husband received employment income during July 2010- February 2011; and
- The overpayment calculation of the appellant's child care subsidy for the period July 2010-October 2011 amounts to \$3,492.58.

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's reconsideration decision of March 21, 2012, upholding the determination of a verification and audit officer that the appellant is liable to repay \$3,492.58 in overpayment of childcare subsidy which the appellant received during the period of July 2010 through February 2011 when her husband was receiving employment income but which income was not included in the calculation of her childcare subsidy.

The *Child Care Subsidy Regulation* provides that the amount of subsidy will be calculated as follows:

**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.

...

(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

$A - B$

Where

A = the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care;  
B = the amount of A for the child, divided by the sum of the amounts of A for all children in the family receiving child care described in section 2, multiplied by 50% of the amount by which the family's monthly net income exceeds the child's threshold.

....

**How monthly net income is calculated**

9(1) The monthly net income of a family is calculated by adding the income that each person in the family receives per month, including, but not limited to, the following:

- (a) employment income;
- (b) self-employment income;

...

(f) training allowances;

...

(3) If the monthly net income of the family varies during a calendar year, the minister may calculate their monthly net income by

- (a) estimating the annual net income that everyone in the family, other than a dependent child, will receive in the calendar year and
- (b) dividing the estimated annual net income by 12.

The *Child Care Subsidy Act* sets out in section 7 the following regarding overpayments, repayments and assignments:

7(1) 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).

The appellant's position is that the reconsideration decision upholding the determination that she is liable to repay \$3,492.58 in overpayment of child care subsidy paid to her during the period July 2010 through February 2011 is unreasonable. The appellant says that the reconsideration officer failed to consider the grounds she set out in her written submissions on the reconsideration at pages 3-6, which submissions concern conversations the appellant had with ministry workers in March 2011 and May 2011, as well as correspondence from the ministry in May 2011. The appellant says in these submissions that "during all these periods, the [appellant] was reporting the income of her spouse and that there is no proof available from the [ministry] which negates that [the appellant and her husband] under reported the income since March 2010 to October 2011." However, the panel notes that these submissions only refer to conversations and correspondence after March 2011, when the ministry discovered that the appellant's husband earned income during the period July 2010 through February 2011. The appellant submitted that the ministry miscalculated her monthly income for the purposes of calculating the overpayment and that the ministry's current calculation (since March 2011) of the family income for the child care subsidy should follow section 9(3) of the *Child Care Subsidy Regulation*.

The ministry says that the appellant's husband's income for the period starting in July 2010 through February 2011 was not reported by the appellant, or disclosed by her or her husband, to the ministry until March 2011, when the appellant reapplied for the child care subsidy. The ministry says that the disputed amounts of the appellant's income upon which the overpayment calculation is based cannot be resolved or changed by this panel, given section 7(5) of the *Child Care Subsidy Act* which restricts the appeal of an amount of an overpayment calculation. The ministry also says that the ongoing calculation of the family income for the purposes of calculating the appellant's current child care subsidy since March 2011 is not an issue before this panel.

The panel finds that the appellant received child care subsidy during the period from July 2010 through February 2011, which was based solely on her income. The panel finds that the appellant's husband received employment income during the period of July 2010 through February 2011 (the appellant does not dispute that her husband received employment income during this period) and that this income was not included in the calculation of the child care subsidy paid to the appellant. The panel finds that the appellant received an overpayment in child care subsidy for the period from July 2010 through February 2011, for which she is liable. Accordingly, the panel finds that the ministry's determination that the appellant is liable to repay \$3,492.58 in overpayment of childcare subsidy which the appellant received during the period of July 2010 through February 2011 when her husband was receiving employment income, but which income was not included in the calculation of her childcare subsidy, is reasonably supported by the evidence and is a reasonable application of the legislation to the circumstances of the appellant. The panel confirms the reconsideration decision of March 21, 2012.